

**NOTICE OF SPECIAL SESSION OF THE
DISTRICT BOARD OF THE EAGLE MOUNTAIN
COMMUNITY FACILITIES DISTRICT**

WHEN: THURSDAY, MAY 18, 2006

TIME: 6:00 – 6:15 P.M.

**WHERE: FOUNTAIN HILLS TOWN HALL
COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS**

Pursuant to A.R.S. 38-431.02, notice is hereby given to the Directors of the District Board of the Eagle Mountain Community Facilities District and to the general public that the District Board of the Eagle Mountain Community Facilities District will hold a special session open to the public beginning at 6:00 p.m. and immediately prior to the Council meeting that begins at 6:30 p.m.

The agenda for the meeting is as follows:

- 1.) Meeting **CALLED TO ORDER** and **ROLL CALL**.
- 2.) **CALL TO THE PUBLIC.**
Pursuant to A.R.S. §38-431-01(G), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Directors is subject to reasonable time, place and manner restrictions. The Directors will not discuss or take legal action on matters raised during "Call to the Public" unless the matters are properly noticed for discussion and legal action. At the conclusion of the call to the public, individual Directors may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future agenda.
- 3.) **CONSIDERATION** of approving the meeting MINUTES of July 7, 2005.
- 4.) **CONSIDERATION** of RESOLUTION EMCFD 2006-01, approving the TENTATIVE BUDGET of the District for the Fiscal Year Beginning July 1, 2006, and ending June 30, 2007, and setting a hearing date for the budget.
- 5.) **ADJOURNMENT.**

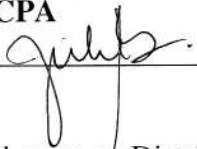
DATED this 12th day of May 2006.

By: _____
Bevelyn J. Bender, District Clerk

The Eagle Mountain Community Facilities District in cooperation with the Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting. Supporting documentation and staff reports furnished with this agenda are available for review in the clerk's office.



**TOWN OF FOUNTAIN HILLS
OFFICE OF THE FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: Honorable Chairman and District Council, Eagle Mountain Community Facilities District	DT: May 11, 2006
THROUGH: Timothy Pickering, District Manager	
FR: Julie A. Ghetti, MPA, CPA 	RE: Eagle Mountain Community Facilities District FY07 Budget and Tax Levy

The Mayor and Town Council serve as District Chairman and Board and Town staff administers the business of the Eagle Mountain Community Facilities District (CFD), formed in FY1996. The District is a component unit of the Town of Fountain Hills and therefore included within the Town's FY07 proposed budget (page 140).

The annual expenditures for the District are for repayment of the bonds that were issued to pay for the subdivision infrastructure. During FY05-06 the District refunded the bonds to take advantage of better interest rates. Therefore the annual debt service payment has been reduced from \$452,000 in FY05 to \$330,500 in FY07. The bonds are repaid through a property tax levy on all property owners within the District as well as any accumulated tax collections from prior years. At the end of FY06 there is an estimated \$450,000 in accumulated collections that should be used to reduce subsequent years tax levies. Therefore, staff is recommending that the levy be reduced next year utilizing surplus funds to supplement the property tax revenue and make the debt payment. The proposed tax levy for FY07 will be reduced from a proposed \$1.974 per hundred to \$0.77 per hundred.

The District will still be liable for other costs such as legal and auditor fees that are directly related to the administration of the District and performed by third parties.

Attached is the proposed budget and tax levy for the Eagle Mountain Community Facilities District for FY2006-07.

cc: Scott Ruby, District Counsel

**PROPOSED BUDGET OF EAGLE MOUNTAIN
COMMUNITY FACILITIES DISTRICT
FISCAL YEAR 2006-2007**

<u>Revenues</u>	<u>For the Year Ended 30-Jun-07</u>
Tax Levy at \$0.7730 per \$100 Secondary Assessed Valuation	\$195,250
Interest earnings	\$2,000
Carryover from prior years	<u>\$150,000</u>
TOTAL	<u><u>\$347,250</u></u>
<u>Expenses</u>	
Annual Debt Service Payment on Refunded Bonds	\$330,500
Administrative Costs	\$6,600
Trustee Fees	<u>\$5,000</u>
TOTAL	<u><u>\$342,100</u></u>

RESOLUTION EMCFD NO. 2006-01

RESOLUTION OF THE CHAIRMAN AND BOARD OF THE EAGLE MOUNTAIN COMMUNITY FACILITIES DISTRICT, APPROVING THE TENTATIVE BUDGET OF THE DISTRICT FOR THE FISCAL YEAR BEGINNING JULY 1, 2006 AND ENDING JUNE 30, 2007, AND SETTING A HEARING DATE FOR THE BUDGET.

BE IT RESOLVED by the Chairman and Board of the Eagle Mountain Community Facilities District, (Town of Fountain Hills), Arizona, as follows:

SECTION 1. That the statements and schedules contained herein are hereby approved for the purpose as hereinafter set forth as the tentative budget for the Eagle Mountain Community Facilities District (the "District") for the fiscal year 2006-07. The statements and estimates of the operation and maintenance expenses of the District (collectively, the "District Expenditures") which are to be paid from ad valorem taxes collected in the District, are hereby filed with the District Clerk.

SECTION 2. That the District Clerk be authorized and directed to cause to be mailed to the governing body of the Town of Fountain Hills and published in the manner prescribed by law, a notice that the District Board will meet for the purpose of conducting a final hearing for District taxpayers on the statements and estimates of District Expenditures filed with the District Clerk and on the adoption of the 2006-07 Annual Budget for the District; said hearing to be conducted on June 1, 2006, at the hour of 6:15 p.m. in the Council Chambers at Fountain Hills Town Hall, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona, with final approval of the Tax Levy on June 15, 2006, at the same time and place.

PASSED AND ADOPTED by the Chairman and Board of the Eagle Mountain Community Facilities District, Maricopa County, Arizona, on May 18, 2006.

W. J. Nichols, District Chairman

ATTEST:

Bevelyn J. Bender, District Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, District Counsel

**NOTICE OF SPECIAL SESSION
OF THE DISTRICT BOARD OF THE
COTTONWOODS MAINTENANCE DISTRICT**

WHEN: THURSDAY, MAY 18, 2006

**TIME: IMMEDIATELY FOLLOWING THE
EAGLE MOUNTAIN COMMUNITY
FACILITIES DISTRICT BOARD MEETING AND PRIOR TO
THE REGULAR MEETING OF THE FOUNTAIN HILLS TOWN COUNCIL**

**WHERE: FOUNTAIN HILLS TOWN HALL
COUNCIL CHAMBERS
16705 E. AVENUE OF THE FOUNTAINS**

Pursuant to A.R.S. 38-431.02, notice is hereby given to the Directors of the Cottonwood Maintenance District and to the general public that the District Board of the Cottonwood Maintenance District will hold a special session open to the public beginning immediately after the Eagle Mountain Facilities District and prior to the Council meeting that begins at 6:30 p.m.

The agenda for the meeting is as follows:

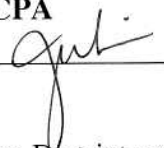
- 1.) Meeting **CALLED TO ORDER** and **ROLL CALL**.
- 2.) **CALL TO THE PUBLIC.**
Pursuant to A.R.S. §38-431-01(G), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Directors is subject to reasonable time, place and manner restrictions. The Directors will not discuss or take legal action on matters raised during "Call to the Public" unless the matters are properly noticed for discussion and legal action. At the conclusion of the call to the public, individual Directors may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future agenda.
- 3.) **CONSIDERATION** of approving the meeting MINUTES of June 2, 2005.
- 4.) **CONSIDERATION** of RESOLUTION CMD2006-01, approving the TENTATIVE BUDGET of the District for the Fiscal Year beginning July 1, 2006, and ending June 30, 2007, and setting a hearing date for the budget.
- 5.) **ADJOURNMENT.**

DATED this 12th day of May 2006.

By: _____
Bevelyn J. Bender, District Clerk

The Cottonwood Maintenance District in cooperation with the Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting. Supporting documentation and staff reports furnished with this agenda are available for review in the clerk's office.

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: Honorable Chairman and District Council	DT: May 18, 2006
THROUGH: Mr. Timothy Pickering, Town Manager	
FR: Julie A. Ghetti, MPA, CPA 	RE: Resolution CMD 2006-01 Cottonwoods Maintenance District

The Cottonwoods Maintenance District was formed by the Town Council in June, 1999 for the purpose of improving the common areas of the Cottonwoods subdivision; the Town Council serves as the governing Board for the district. Cottonwoods Improvement District bonds were sold in 1999 and the proceeds were used to construct sidewalks and install landscaping improvements within the common area. The improvement bonds were repaid by each property owner through an assessment upon their property billed by the Town.

The Maintenance District provides for the maintenance of the common area, which is performed by the Town of Fountain Hills. This includes the common pedestrian, parking and parkways within the boundaries of that district, which is the Cottonwoods subdivision. The district reimburses the Town for the cost (\$3,300 annually, or \$57.15 per property owner). The annual cost is repaid through ad valorem taxes collected from the 58 property owners within the district. The attached Resolution CCFD 2006-01 authorizes the County to levy a fixed amount of \$57.15 annually on those homeowners.

I would be happy to answer any questions that the Council may have.

RESOLUTION CMD NO. 2006-01

RESOLUTION OF THE COTTONWOODS MAINTENANCE DISTRICT BOARD, MARICOPA COUNTY, ARIZONA, APPROVING THE TENTATIVE BUDGET OF THE DISTRICT FOR THE FISCAL YEAR BEGINNING JULY 1, 2006 AND ENDING JUNE 30, 2007, AND SETTING A HEARING DATE FOR THE BUDGET.

BE IT RESOLVED by the Board of Directors of the Cottonwoods Maintenance District, Maricopa County, Arizona, as follows:

SECTION 1. That the statements and schedules attached as Exhibit A, incorporated herein by this reference, are hereby approved for the purpose as hereinafter set forth as the tentative budget for the Cottonwoods Maintenance District, Maricopa County, Arizona, (the "District") for the fiscal year 2006-07. The statements and estimates of the operation and maintenance expenses of the District, the costs of capital improvements and other expenditures for public infrastructure of the District (collectively, the "District Expenditures") are hereby filed with the District Clerk.

SECTION 2. That the District Clerk is hereby authorized and directed to cause to be mailed to the governing body of the Town of Fountain Hills and published in the manner prescribed by law, a notice that the District Board will meet for the purpose of conducting a final hearing for District taxpayers on the statements and estimates of District Expenditures filed with the District Clerk and on the adoption of the 2006-07 Annual Budget for the District; said hearing to be conducted on June 1, 2006, at the hour of 6:00 p.m. in the Council Chambers at Fountain Hills Town Hall, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona 85268, with final approval of the Tax Levy on June 15, 2006, at the same time and place.

PASSED AND ADOPTED by the Board of Directors of the Cottonwoods Maintenance District, Maricopa County, Arizona, on May 18, 2006.

W. J. Nichols, District Chairman

ATTEST:

Bevelyn J. Bender, District Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, District Counsel



**NOTICE OF
REGULAR SESSION OF THE
FOUNTAIN HILLS TOWN COUNCIL**

Mayor Wally Nichols

*Councilmember Mike Archambault
Councilmember Ginny Dickey
Councilmember Ed Kehe*

*Councilmember Keith McMahan
Councilmember John Kavanagh
Vice Mayor Jay Schlum*

TIME: 6:30 P.M. - REGULAR SESSION

WHEN: THURSDAY, MAY 18, 2006

WHERE: **FOUNTAIN HILLS COUNCIL CHAMBERS**

16705 E. AVENUE OF THE FOUNTAINS, FOUNTAIN HILLS, AZ

PROCEDURE FOR ADDRESSING THE COUNCIL

Anyone wishing to speak before the Council must fill out a speaker's card and submit it to the Town Clerk prior to Council discussion of that Agenda item. Speaker Cards are located in the Council Chamber Lobby and near the Clerk's position on the dais.

Speakers will be called in the order in which the speaker cards were received either by the Clerk or the Mayor. At that time, speakers should stand and approach the podium. Speakers are asked to state their name prior to commenting and to direct their comments to the Presiding Officer and not to individual Councilmembers. Speakers' statements should not be repetitive. *If a speaker chooses not to speak when called, the speaker will be deemed to have waived his or her opportunity to speak on the matter. Speakers may not (i) reserve a portion of their time for a later time or (ii) transfer any portion of their time to another speaker.*

If there is a Public Hearing, please submit the speaker card to speak to that issue during the Public Hearing.

Individual speakers will be allowed **three** contiguous minutes to address the Council. Time limits may be waived by (i) *discretion of the Town Manager upon request by the speaker not less than 24 hours prior to a Meeting*, (ii) *consensus of the Council at Meeting* or (iii) *the Mayor either prior to or during a Meeting*. Please be respectful when making your comments. If you do not comply with these rules, you will be asked to leave.

- **CALL TO ORDER AND PLEDGE OF ALLEGIANCE** – Mayor Nichols
- **INVOCATION** – Pastor Steve Bergeson, Shepherd of the Hills Lutheran Church
- **ROLL CALL** – Mayor Nichols
- **MAYOR’S REPORT** –
 - (i) **Recognition of community service by Councilmember John Kavanagh.**
 - (ii) **Presentation on the Lori Piestewa National Native American Games.**
 - (iii) **Recognition of outgoing Board of Adjustment member Ross Bryant.**
 - (iv) **Proclaiming Friday, May 26, 2006 and Saturday, May 27th, 2006 “Poppy Days”.**

CALL TO THE PUBLIC

Pursuant to A.R.S. §38-431-01(G), public comment is permitted (not required) on matters not listed on the agenda. Any such comment (i) must be within the jurisdiction of the Council and (ii) is subject to reasonable time, place, and manner restrictions. The Council will not discuss or take legal action on matters raised during “Call to the Public” unless the matters are properly noticed for discussion and legal action. At the conclusion of the call to the public, individual Councilmembers may (i) respond to criticism, (ii) ask staff to review a matter or (iii) ask that the matter be placed on a future Council agenda.

***CONSENT AGENDA -**

- *1.) **CONSIDERATION** of approving the TOWN COUNCIL MEETING MINUTES from April 28 and May 4, 2006.
- *2.) **CONSIDERATION** of approving the PERMANENT EXTENSION OF PREMISE liquor license for Terra Nostra Italian Café (Matilde Salazar) located at 17210 E. Palisades Boulevard, Fountain Hills, AZ.
- *3.) **CONSIDERATION** of approving the TEMPORARY EXTENSION OF PREMISE liquor license for Grapeables Fine Wine (James Myczek) located at 12645 N. Saguaro Boulevard, Fountain Hills, AZ, scheduled for Saturday, May 20, 2006 from 7 p.m. to 11 p.m.
- *4.) **CONSIDERATION** of approving the FINAL PLAT for a two-unit condominium plat entitled “Final Plat, Lamont Twin Homes, located at 12013 Lamont Drive aka Plat 201, Block 1, Lot 7. Case #S2006-08.
- *5.) **CONSIDERATION** of approving the FINAL PLAT for a three-unit commercial condominium plat entitled “Final Plat, East Lake Condominiums” and located at 16842 Parkview Avenue aka Plat 208, Block 5, Lot 4. Case #S2006-10.
- *6.) **CONSIDERATION** of approving the PURCHASE AGREEMENT with Five Star Ford for a Ford Escape hybrid 4x4 vehicle in the amount of \$29,275.38.
- *7.) **CONSIDERATION** of RESOLUTION 2006-28, revising the Council Rules of Procedure regarding the required number of meetings held each month.
- *8.) **CONSIDERATION** of ALLOWING THE WITHDRAWAL OF A TEMPORARY USE PERMIT application to operate the Red Rock Bed and Breakfast, at 15719 E. Sycamore Drive aka Plat 603C, Block 4, Lot 1. Case# TU2005-07. **The applicant has requested their application be permitted to be withdrawn.**

- *9.) **CONSIDERATION** of approving a sub consulting construction-services CONTRACT with the WLB Group, Inc., for field surveillance, electrical engineering services, structural engineering services, drafting services, and structural inspection in the amount of \$45,000.

REGULAR AGENDA

- *10.) **CONSIDERATION** of Resolution 2006-31 declaring as public record that certain document filed with the Town Clerk and entitled the "2006 Amendments to the Tax Code of the Town of Fountain Hills."
- *11.) **CONSIDERATION** of Ordinance 06-17 relating to the privilege license tax; adopting the "2006 Amendments to the Tax Code of the Town of Fountain Hills" by reference; establishing an effective date; providing for severability and providing penalties for violations.
- 12.) **CONSIDERATION** of a TRAFFIC CONTROL CHANGE for the gated rear entrance to Kern Plaza.
- 13.) **PUBLIC HEARING** regarding a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 AM for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106, aka Four Peaks Plaza. Case #SU2006-04.
- 14.) **CONSIDERATION** of a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 AM for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106, aka Four Peaks Plaza. Case #SU2006-04.
- 15.) **CONSIDERATION** of ORDINANCE 06-14, a Town Code text amendment to remove all references to the Marshals Department.
- 16.) **CONSIDERATION** of RESOLUTION 2006-18, ADOPTING THE maximum amount for the Town of Fountain Hills Fiscal Year 2006-07 TENTATIVE BUDGET with appropriate direction to publish said document in accordance with state law. The Council may address any or all items contained in the budget document and initiate any suggested changes prior to adoption.
- 17.) **CONSIDERATION** of renewing the LICENSE AGREEMENT between the Town of Fountain Hills and Cox Communications.
- 18.) **COUNCIL DISCUSSION/DIRECTION** to the Town Manager.
- Items listed below are related only to the propriety of (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council: A. *NONE*
- 19.) **SUMMARY OF COUNCIL REQUESTS** by Town Manager.
- 20.) **ADJOURNMENT.**

DATED this 17th day of May 2006:

Jane E. Robinson, Acting Town Clerk

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting or to obtain agenda information in large print format. *Supporting documentation and staff reports furnished the Council with this agenda are available for review in the Clerk's office.*

TOWN OF FOUNTAIN HILLS PROCLAMATION

OFFICE OF THE MAYOR

WHEREAS, America is the land of freedom, preserved and protected willingly and freely by citizen soldiers; and

WHEREAS, Millions who have answered the call to arms have died on the field of battle; and

WHEREAS, A nation of peace must be reminded of the price of war and the debt owed to those who have died in war; and


WHEREAS, THE **RED POPPY** HAS BEEN DESIGNATED AS A SYMBOL OF SACRIFICE OF LIVES IN ALL WARS, and

WHEREAS, The Veterans of Foreign War have pledged to remind America annually of this debt through the distribution of the **RED POPPY**;

NOW, THEREFORE, I, Wallace J. Nichols, Mayor of the Town of Fountain Hills, Maricopa County, Arizona, do hereby proclaim Friday, May 26th and Saturday, May 27th, 2006, as **POPPY DAYS** in the Town of Fountain Hills and ask that all citizens pay tribute to those who have made the ultimate sacrifice in the name of freedom by wearing the memorial poppy on those days.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of the Town of Fountain Hills, Maricopa County, Arizona this 18th day of May, 2006.




Wallace J. Nichols, Mayor


Bevelyn J. Bender, Town Clerk

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Administration

Contact Person: Bender

Consent: ☒

Regular: ☐

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input checked="" type="checkbox"/> Other: Draft Meeting Minutes | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | |

Regular Agenda Wording: CONSIDERATION of approving the TOWN COUNCIL MEETING MINUTES from April 28 and May 4, 2006.

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: Approve the council meeting minutes for archival purposes.

List All Attachments as Follows:

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Administration

Contact Person: Bender

Consent: ☒

Regular: ☐

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|--|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input checked="" type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | |

Regular Agenda Wording: CONSIDERATION of approving the PERMANENT EXTENSION OF PREMISE liquor license application for the Terra Nostra Italian Café (Matilde Salazar), located at 16740 E. Palisades Blvd., Fountain Hills, AZ.

Staff Recommendation: Approve **Fiscal Impact:** No \$ _____

Purpose of Item and Background Information: To obtain Council approval for the extension of premise submitted by Terra Nostra Italian Cafe. The application was reviewed by Law Enforcement, Planning and Zoning, the Fire Department and Administration for compliance and all recommended approval of this permanent extension as submitted. The applicant will be extending their business to include outdoor seating that is surrounded by a four foot fence as shown by the attached diagram to prevent alcohol leaving the permit area. The Fountain Hills Business License is current and there are no known alcohol violations to date that would prohibit granting this application.

List All Attachments as Follows: Application, area diagram, departmental approvals, and Law Enforcement's memo

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5TH Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595



APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

THIS APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF LIQUOR

☒ Permanent change of area of service - Give specific purpose of change: enclose area outside building for outdoor seating

☐ Temporary change for date(s) of: _____

- Licensee's Name: SALAZAR MATILDE
Last First Middle
- Mailing Address: 17210 E. LA PASADA DR. FOUNTAIN HILLS AZ 85268
City State Zip
- Business Name: TERRA NOSTRA ITALIANA LICENSE #: _____
- Business Address: 16740 E. PALISADES BLVD. FOUNTAIN HILLS AZ 85268
City COUNTY State Zip
- Business Phone: (480) 837-3557 Residence Phone: _____
- Do you understand Arizona Liquor Laws and Regulations? ☒ YES ☐ NO FAX # () _____
- Have you received approved Liquor Law Training? ☐ NO ☒ YES When? 1 YEAR AGO
- What security precautions will be taken to prevent liquor violations in the extended area? 4' fence encloses the outdoor seating area
- Does this extension bring your premises within 300 feet of a church or school? ☐ YES ☒ NO
- IMPORTANT:** ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

****After completing sections 1-9, take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

(Authorized Signature)

(Title)

(Agency)

- I, matilde Salazar, being first duly sworn upon oath, hereby depose, swear and declare,
(Print full name)
under penalty of perjury, that I am the APPLICANT making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.

X [Signature] State of ARIZONA County of MARICOPA
(Signature of Owner or Agent) SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date

24TH APRIL 2006
Day Month Year
[Signature]
(Signature of NOTARY PUBLIC)

My commission expires on: JUNE 14, 2009

Investigation Recommendation ☐ Approval ☐ Disapproval by: _____ Date: _____

Director Signature required for approvals _____ Date: _____

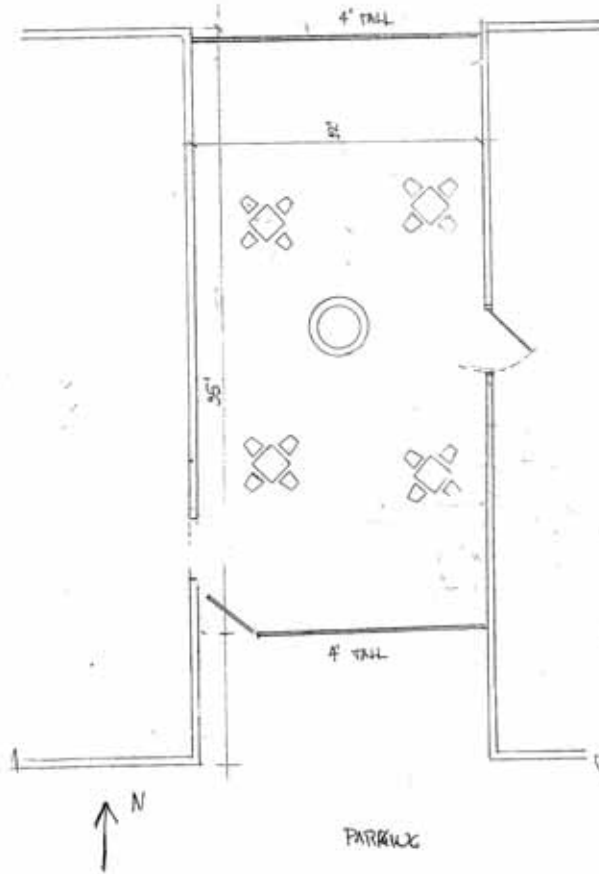
LIC 6105 *Disabled individuals requiring special accommodation, please call the Department (602) 542-9027.



CP2006-06

RECEIVED
APR 17 2006
FBI - LOS ANGELES

LA HOYTANA



**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Dept. (If applicable) 3) Law Enforcement 4) Fire Department 5) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Application for Permanent Extension of Premise Application – Terra Nostra Italian Cafe

Attached is an Application for a permanent extension of premise liquor license application for review for Terra Nostra Italian Cafe located at 16740 E. Palisades Blvd., FH.

Please review the application **no later** than **Monday, May 1, 2006** indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Matilde Salazar

Date of Event: NA

Date Application Received:

April 24, 2006

Town Council Agenda Date:

May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Planning & Zoning/Building RD 4/25/96 Approved Denied*

Law Enforcement _____ Approved _____ Denied*

Licensing Does the business have a current business license? Yes No

Business License # _____ Effective period _____

Does the business name match database?

_____ Yes _____ No

Do owners and/or officers listed on the application match the database? _____ YES _____ NO

_____Yes _____No

Does the mailing and business address match the database?

_____Yes _____No

***Attach report for denial or any required stipulations**

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Dept. (If applicable) 3) <u>Law Enforcement</u> 4) Fire Department 5) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Application for Permanent Extension of Premise Application – Terra Nostra Italian Cafe

Attached is an Application for a permanent extension of premise liquor license application for review for Terra Nostra Italian Cafe located at 16740 E. Palisades Blvd., FH.

Please review the application **no later** than **Monday, May 1, 2006** indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Matilde Salazar

Date of Event: NA

Date Application Received:

April 24, 2006

Town Council Agenda Date:

May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Planning & Zoning/Building _____ Approved _____ Denied*

Law Enforcement gw #1574 _____ Approved _____ Denied*

Licensing Does the business have a current business license?

_____ Yes _____ No

Business License # _____ Effective period _____

Does the business name match database?

_____ Yes _____ No

Do owners and/or officers listed on the application match the database?

_____ Yes _____ No

Does the mailing and business address match the database?


_____ Yes _____ No

***Attach report for denial or any required stipulations**

File: \\FHS\apps\1\perm\Processors of Premises\Permanent Extension of Premises-Terra Nostra\2006\01\AL.doc

MARICOPA COUNTY SHERIFF'S OFFICE

Memorandum

 <small>Joseph M. Arpaio, Sheriff</small>	To: Bev Bender Town Clerk Fountain Hills	From: Julie White #1574 <i>gw</i> Special Events Coordinator District 7/ Fountain Hills
	Subject: Permanent Extension of Premise Application of Terra Nostra Italian Cafe	Date: April 25, 2006

The purpose of this memorandum is to endorse the attached permanent extension of premise liquor license submitted by Terra Nostra Italian Café located at 16740 East Palisades Blvd., of Fountain Hills. This issue will go before The City Council for final approval.

The application states the area to be extended will be surrounded by four foot fencing outside the building for outdoor seating as shown on the attached diagram to prevent alcohol leaving the permit area.

As of this application, there have not been any known alcohol violations to date, which would prohibit granting of this extension.

Based on the above information, I recommend approval of this permit.

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Dept. (If applicable) 3) Law Enforcement 4) Fire Department 5) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Application for Permanent Extension of Premise Application – Terra Nostra Italian Cafe

Attached is an Application for a permanent extension of premise liquor license application for review for Terra Nostra Italian Cafe located at 16740 E. Palisades Blvd., FH.

Please review the application **no later** than **Monday, May 1, 2006** indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Matilde Salazar

Date of Event: NA

Date Application Received:

April 24, 2006

Town Council Agenda Date:

May 18, 2006

Approvals (please sign):

Fire Department

e-ni Approved

_____ Denied*

Planning & Zoning/Building

_____ Approved

_____ Denied*

Law Enforcement

____ Approved

_____ Denied*

Licensing Does the business have a current business license?

_____ Yes _____ No

Business License # _____ Effective period _____

Does the business name match database?

_____ Yes _____ No

Do owners and/or officers listed on the application match the database?

_____ Yes _____ No

Does the mailing and business address match the database?

_____Yes _____No

***Attach report for denial or any required stipulations**

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Dept. (If applicable) 3) Law Enforcement 4) Fire Department 5) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Application for Permanent Extension of Premise Application – Terra Nostra Italian Cafe

Attached is an Application for a permanent extension of premise liquor license application for review for Terra Nostra Italian Cafe located at 16740 E. Palisades Blvd., FH.

Please review the application no later than Monday, May 1, 2006 indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Matilde Salazar

Date of Event: NA

Date Application Received:

April 24, 2006

Town Council Agenda Date:

May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Planning & Zoning/Building	Approved	Denied*
----------------------------	----------	---------

Law Enforcement _____ Approved _____ Denied*

Licensing Does the business have a current business license? X Yes No

Business License # 7224 Effective period 4/1/04-3/31/17

Does the business name match database? X Yes No

Do owners and/or officers listed on the application match the database?

X Yes No

Does the mailing and business address match the database?
☒ Yes ☐ No

***Attach report for denial or any required stipulations**

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Administration

Contact Person: Bender

Consent: ☒

Regular: ☐

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|--|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input checked="" type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input checked="" type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | |

Regular Agenda Wording: CONSIDERATION of approving the TEMPORARY EXTENSION OF PREMISE liquor license application for Grapeables Fine Wines (James Myczek), located at 12645 N. Saguaro Blvd. #9, Fountain Hills, AZ, scheduled for Saturday, May 20, 2006, from 7:00 p.m. to 11 p.m.

Staff Recommendation: Approve **Fiscal Impact:** No \$ _____

Purpose of Item and Background Information: To obtain Council approval for a temporary extension of premise submitted by Grapeables Fine Wines in conjunction with one of the events permitted under the Plaza Fountainside Merchants Association temporary use permit approved by the Council in February 2006. The applicant proposes to fence the outdoor seating area as indicated on the attached diagram and have security and/or Deputies posted at the entrances/exits to prevent alcohol leaving the permit area. The application was reviewed by Parks & Recreation, Law Enforcement, Planning and Zoning, the Fire Department and Administration for compliance and all recommend approval of this temporary extension of premise as submitted.

List All Attachments as Follows: Application, area diagram, departmental approvals, park rental contract, and Law Enforcement's memo

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

RECEIVED
APR 24 2006FOUNTAIN HILLS
TOWN CLERK

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141400 W Congress #150
Tucson AZ 85701-1352
(520) 628-6595

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

☐ Permanent change of area of service☒ Temporary change for date(s) of: MAY 20, 20061. Owner or Agent's Name: MYCZEK JAMES

Last

First

W

Middle

2. Mailing Address: 12645 N. Saguaro #9 Fountain Hills, AZ 85268

City

State

Zip

3. Business Name: GRAPEABLES FINE WINES LICENSE #: 070708784. Business Address: 12645 N. Saguaro #9 Fountain Hills, AZ 85268

City

COUNTY

State

Zip

5. Business Phone: (480) 816-5959Residence Phone: [REDACTED]6. Are you familiar with Arizona Liquor Laws and Regulations? ☒ YES ☐ NO7. What security precautions will be taken to prevent liquor violations in the extended area? PEOPLE FOUR AND SECURE8. Does this extension bring your premises within 300 feet of a church or school? ☐ YES ☒ NO9. **IMPORTANT:** ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

After completing sections 1-9, take this application to your local Board of Supervisors, City Council or Designate for their recommendation.

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

(Authorized Signature)

(Title)

(Agency)

I, JAMES MYCZEK, hereby declare that I am the APPLICANT filing this application. I have read the application and the contents and all statements are true, correct and complete.

(Print full name)

x James Myczek
(Signature of Owner or Agent)State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this17 day of April, 2006
Day of Month YearMy commission expires on: 12 September 2009

Investigation Recommendation: _____

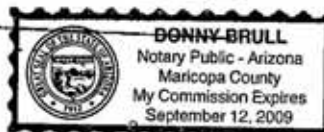
(Signature of NOTARY PUBLIC)

Date: _____

Licensing Approval: _____

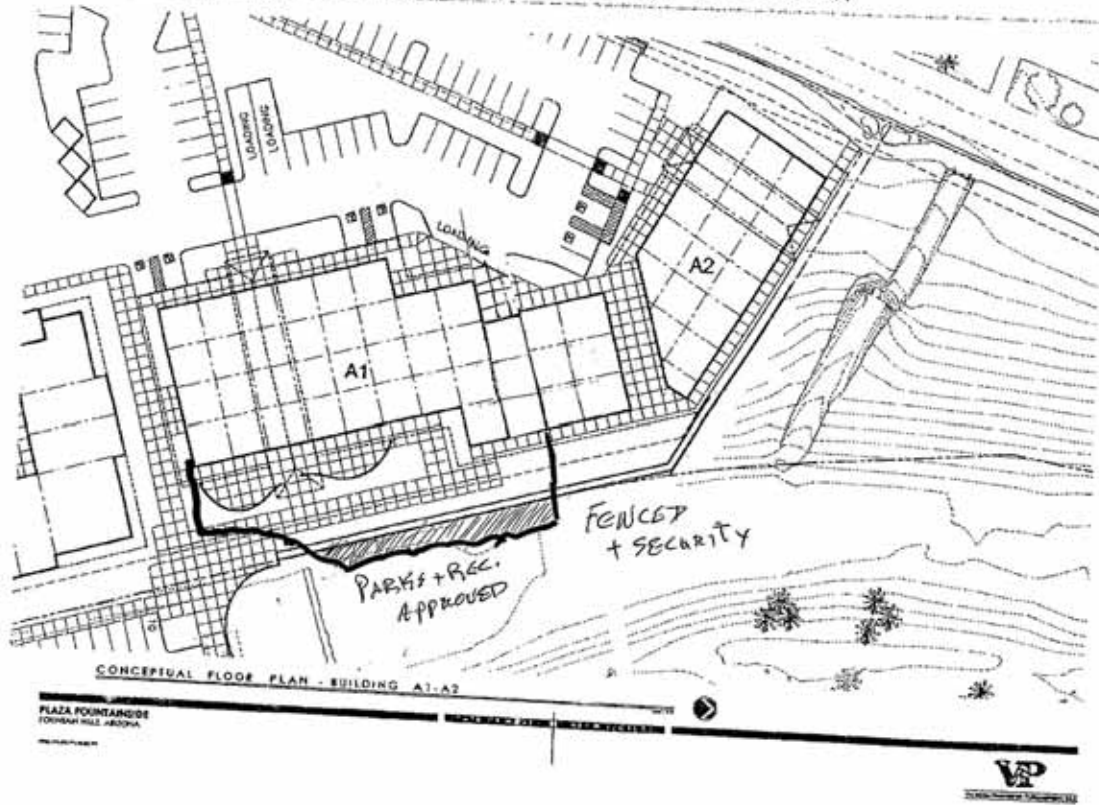
Date: _____

Disabled 1-20-04



TOTAL P.02

PLAZA FOUNTAINSIDE SOCIAL EVENT SITE PLAN.



**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Department (If applicable) 3) Law Enforcement/Fire Dept. 4) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Extension of Premise Liquor License Application – Grapeables Fine Wines

Attached is an Application for an extension of premise liquor license application for review for Grapeables Fine Wines located at 12645 N. Saguaro #9, FH.

Please review the application no later than Monday, May 1, 2006 indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Grapeables Fine Wines/James Myczek **Date of Event:** May 20, 2006

Date Application Received: April 24, 2006

Town Council Agenda Date: May 18, 2006

Approvals (please sign):

Fire Department E. Bender Approved _____ Denied*

Building Department _____ Approved _____ Denied*

Planning & Zoning _____ Approved _____ Denied*

Law Enforcement _____ Approved _____ Denied*

Licensing Does the business have a current business license? _____ Yes _____ No

Business License # _____ Effective period _____

Does the business name match database? _____ Yes _____ No

Do owners and/or officers listed on the application match the database? _____ Yes _____ No

Does the mailing and business address match the database? _____ Yes _____ No

***Attach report for denial or any required stipulations**

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Department (If applicable) 3) Law Enforcement/Fire Dept. 4) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Extension of Premise Liquor License Application – Grapeables Fine Wines

Attached is an Application for an extension of premise liquor license application for review for Grapeables Fine Wines located at 12645 N. Saguaro #9, FH.

Please review the application no later than Monday, May 1, 2006 indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Grapeables Fine Wines/James Myczek **Date of Event:** May 20, 2006

Date Application Received: April 24, 2006

Town Council Agenda Date: May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Building Department _____ Approved _____ Denied*

Planning & Zoning  4/25/06 _____ Approved _____ Denied*

Law Enforcement _____ Approved _____ Denied*

Licensing Does the business have a current business license? _____ Yes _____ No

Business License # _____ Effective period _____

Does the business name match database? _____ Yes _____ No

Do owners and/or officers listed on the application match the database? _____ Yes _____ No

Does the mailing and business address match the database? _____ Yes _____ No

***Attach report for denial or any required stipulations**

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Department (If applicable) 3) Law Enforcement/Fire Dept. 4) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Extension of Premise Liquor License Application – Grapeables Fine Wines

Attached is an Application for an extension of premise liquor license application for review for Grapeables Fine Wines located at 12645 N. Saguaro #9, FH.

Please review the application no later than Monday, May 1, 2006 indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Grapeables Fine Wines/James Myczek **Date of Event:** May 20, 2006

Date Application Received: April 24, 2006

Town Council Agenda Date: May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Building Department _____ Approved _____ Denied*

Planning & Zoning _____ Approved _____ Denied*

Law Enforcement _____ Approved _____ Denied*

Licensing Does the business have a current business license? X Yes _____ No

Business License # 4026 Effective period 7/1/05 - 6/30/06

Does the business name match database? X Yes _____ No

Do owners and/or officers listed on the application match the database? X Yes _____ No

Does the mailing and business address match the database? X Yes _____ No

***Attach report for denial or any required stipulations**

**TOWN OF FOUNTAIN HILLS
OFFICE OF FINANCE DIRECTOR
INTER OFFICE MEMO**

TO: 1) Public Works 2) Planning & Zoning/Building Department (If applicable) 3) Law Enforcement/Fire Dept. 4) Licensing	DT: April 24, 2006
FROM: Bev Bender, Town Clerk	RE: Extension of Premise Liquor License Application – Grapeables Fine Wines

Attached is an Application for an extension of premise liquor license application for review for Grapeables Fine Wines located at 12645 N. Saguaro #9, FH.

Please review the application no later than Monday, May 1, 2006 indicating staff's recommendation for approval or denial in the space below and return this form to the Town Clerk.

If denied, please attach a report that specifies the reason for denial for submittal to the Town Council.

Applicant: Grapeables Fine Wines/James Myczek **Date of Event:** May 20, 2006

Date Application Received: April 24, 2006

Town Council Agenda Date: May 18, 2006

Approvals (please sign):

Fire Department _____ Approved _____ Denied*

Building Department _____ Approved _____ Denied*

Planning & Zoning _____ Approved _____ Denied*

Law Enforcement gw #1574 _____ Approved _____ Denied*

Licensing Does the business have a current business license? _____ Yes _____ No

Business License # _____ Effective period _____

Does the business name match database? _____ Yes _____ No


Do owners and/or officers listed on the application match the database? _____ Yes _____ No

Does the mailing and business address match the database? _____ Yes _____ No

***Attach report for denial or any required stipulations**

E:\Clerk\Liquor Licenses\extension of Premise\extension of Premise Grapeables SUBMITTAL 4-24-06.doc

MARICOPA COUNTY SHERIFF'S OFFICE**Memorandum**

 <small>Joseph M. Arpaio, Sheriff</small>	To: Bev Bender Town Clerk Fountain Hills	From: Julie White #1574 <i>gw</i> Special Events Coordinator District 7/ Fountain Hills
	Subject: Extension of Premise Liquor License	
		Date: April 25, 2006

The purpose of this memorandum is to endorse the attached extension of premise liquor license submitted by Grapeables Fine Wines at 12645 N. Saguaro Blvd. of Fountain Hills. This issue will go before The City Council for final approval.

The event on May 20, 2006, starts at 7pm and ending at 11pm time frame. The permit covers only the area specified in the application.

As of this application, there have not been any known alcohol violations to date, which would prohibit granting of this extension.

In addition, Grapeables will post security and/or Deputies at the entrances/exits to prevent alcohol leaving the permit area.

Based on the above information, I recommend approval of this permit.



Rental Contract / Permit

Printed: 17-Apr-06, 03:18 PM

User: rpsillas

Contract #: 5874
Date: 17-Apr-06

User: rpsillas
Status: Firm

Fountain Hills Parks & Recreation, 13001 N. La Montana Dr. hereby grants Plaza Fountainside Merchants Association (hereinafter called the "Licensee") represented by Erin Heasley, permission to use the Facilities as outlined, subject to the Terms and Conditions of this Agreement contained herein and attached hereto all of which form part of this Agreement.

i) Purpose of Use Special Event
 Promotional

ii) Conditions of Use

iii) Date and Times of Use # of Bookings: 1 Starting: 20-May-06 Expected: 0
 Ending: 20-May-06

Facility/Equipment	Day	Start Date	Start Time	End Date	End Time	Fee	XFee	Tax	Total
FP - Rotary Splash Pad	Sat	20-May-06	07:00 PM	20-May-06	11:00 PM	\$0.00	\$0.00	\$0.00	\$0.00

iv) Additional Fees

v) Payment Method

Rental Fees	Extra Fees	Tax	Rental Total	Damage Deposit	Total Applied	Balance	Current
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Balance of rental due and payable immediately

vi) Other Information

The undersigned has read and on behalf of the Licensee agrees to be bound by this Permit/License and the Terms and Conditions contained herein and attached hereto, and hereby warrants and represents that he/she executes this Permit/License on behalf of the Licensee and has sufficient power, authority and capacity to bind the Licensee with his/her signature.

X: _____

Erin Heasley

Plaza Fountainside Merchants Association
P.O. Box 18298
Fountain Hills AZ 85268
USA

Home: ()

Fax: (480)

Business: (602)909-4566

Date: _____

X: _____

Name: _____

Title: _____

Fountain Hills Parks & Recreation

Date: _____



Town of FOUNTAIN HILLS
Parks and Recreation Department
FACILITY USE REQUEST

16705 East Avenue of the Fountains ~ Fountain Hills, AZ 85268
Telephone (480) 816-5151 ~ Fax (480) 837-3999
E-mail: Parksrec@fh.az.gov ~ Website: www.fh.az.gov

Park or Facility Requested Fountain Park		Specific Location Requested Splash Pad	
Use Date(s) May 20th 2006		Hours (include set-up and take-down) FROM 7 pm TO 11 pm	
Event Planned 50-60's dance		No. Attending 200	
Responsible Party Erin Heasley		Organization or Group Plaza Fountain Side Merch. Assoc	
Address, City, State & Zip Code [REDACTED]		Home Phone Number [REDACTED]	
		Work or Cell Phone [REDACTED]	

Will there be an admission fee, donations taken, tickets sold, or items or services sold?

☒ YES

☐ NO

If YES, explain

\$3 entry fee

Will there be any large equipment or animals brought into park premises (i.e. tables, stage, trailers, inflatable bouncy equipment, petting zoos, other)? If so, please provide the Town with a Certificate of Insurance for the vendor providing services. The Certificate of Insurance should list the Town of Fountain Hills as additional insured and the date of the event.

☒ YES

☐ NO

If YES, explain

Cars

Will vendors be used? (i.e. caterer, band, other)

☒ YES

☐ NO

If YES, explain

band

Will alcohol be served or sold?

☒ YES

☐ NO

I have read, understood, and agreed to abide by the Town of FOUNTAIN HILLS Park Rules outlined on the reserve side. Additionally, I understand the reserved area will be left clean and damage free once the reservation is completed.

SIGNATURE OF RESPONSIBLE PARTY: **Erin Heasley**

Date: **4/17/06**

FOR OFFICE USE ONLY

Rental Information

Rental Number	5874
Alcohol Permit Number	/
Certificate of Insurance	/

Rental Extras

Athletic Field Lights	/
Athletic Field Prep & Bases	/
Fountain Operation	/
Park Labor	/

Approved: **[Signature]**

Parks & Recreation Staff

Date: **4-17-06**

Office Use

4-17-06

Date Received

\$0.00

Rental Fees

\$0.00

Amount Received

Check No. / Cash / Credit Card

White - Office Binder

Canary - Field Supervisor Binder

Pink - Parks Operation Supervisor

Gold - Customer

Fountainside Plaza Events 2006

February	2/24-2/26	Great Fair	
Tents and tables will be used		A-4	10 AM – 10 PM.
March	3/24-3/26	Chili Cook-Off	
Tents and tables will be used		A-3	Noon – 6 PM
April	4/22+4/23	50's-60's Dance	6 – 10 PM
		A-3	
May	5/19-5/21	Art Show	
Tents and tables will be used		A-3	Noon – 8 PM
June	6/16-6/18	Pet Art Walk	
		A-3	Noon – 8 PM
July	7/14-7/16	Art walk	
Tents and tables will be used		A-3	Noon – 8 PM
August	8/11-8/13	Ice Cream Social	
Tents and tables will be used		A-3	4 – 10 PM
September	9/15-9/17	Auto Show	
		A-3	Noon – 6 PM
October	10/13-10/15	Disco Dance	
		A-3	6 – 10 PM
November	11/10-11/12	Great fair	
Tents and tables will be used		A-4	10 – 5 PM
December	12/8-12/10	Holiday Lighting of Plaza	
			5 – 9 PM

April 22 & 4/23 event not held and 50's 60s Dance moved to May 20.

May 20 event now the 50's – 60's Dance (7 p.m – 11 p.m.)

RECEIVED

JAN 11 2006

FOUNTAIN HILLS
PLANNING & ZONING

Tu2006-01

Town of Fountain Hills

Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Public Works

Contact Person: Bob Rodgers

Consent: ☒

Regular: ☐

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input checked="" type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|---|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input checked="" type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: CONSIDERATION of the FINAL PLAT for a 2-unit condominium plat entitled "Final Plat, Lamont Twin Homes, A Condominium" and located at 12013 Lamont Drive. AKA (Plat 201, Block 1, Lot 7) Case #S2006-08

Staff Recommendation: Approve **Fiscal Impact:** No \$ _____

Purpose of Item and Background Information: Two-Unit condominium plat.

List All Attachments as Follows: Staff Report

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager

**TOWN OF FOUNTAIN HILLS
TOWN COUNCIL
STAFF REPORT**

TO: Honorable Mayor & Town Council	DT: May 18, 2006
FR: Robert Rodgers, Senior Planner THR: Richard Turner, AICP Planning and Zoning Administrator	RE: Final Plat Lamont Twin Homes CASE #S2006-08

LOCATION: 12013 Lamont Drive --- Plat 201, Block 1, Lot 7

REQUEST: Consider the Final Plat, Labeled “Final Plat, Lamont Twin Homes, A Condominium”, a 2-unit condominium project.

DESCRIPTION:

OWNER:	Gina & Bruce Boer
APPLICANT:	HTPO, Inc.
EXISTING ZONING:	R-2
EXISTING CONDITION:	Built
LOT SIZE:	0.29 acres (12,600 ± sf)

SURROUNDING LAND USES AND ZONING:

NORTH:	2-unit Condominiums; Zoned “R-2”
SOUTH:	2-unit Condominiums; Zoned “R-2”
EAST:	12-unit Condominiums Under Construction; Zoned “R-3”
WEST:	Single Family houses; Zoned “R1-8”

SUMMARY:

This request is for approval of the Final Plat for “Final Plat, Lamont Twin Homes, A Condominium”, Declaration of Condominium, which subdivides cubic airspace, and is not a land sell project. This is a basic division of an existing 2-unit building and this project does not involve any off-site public improvements.

The owners, Gina & Bruce Boer, have applied to convert a two-unit residential complex and record a Declaration of Condominium in order to sell the units individually. Unit A has a maximum livable area of 1,347 square feet. Unit B also has a maximum livable area of 1,347 square feet. Each unit has a covered carport, covered entry, and patio.

FINDINGS:

The property meets all underlying requirements of the zoning and subdivision ordinances.

RECOMMENDATION:

The Planning & Zoning Commission voted to approve the Preliminary Plat at their regular meeting of April 27, 2006.

Staff recommends approval of Case #S2006-08; Final Plat
Labeled “Final Plat, Lamont Twin Homes, A Condominium”



Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Public Works

Contact Person: Bob Rodgers

Consent: ☒

Regular: ☐

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input checked="" type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|---|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input checked="" type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: CONSIDERATION of the FINAL PLAT for a 3-unit commercial condominium plat entitled "Final Plat, East Lake Condominiums" and located at 16842 Parkview Ave. AKA (Plat 208, Block 5, Lot 4) Case #S2006-10

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: Three-Unit condominium plat.

List All Attachments as Follows: Staff Report

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager

**TOWN OF FOUNTAIN HILLS
TOWN COUNCIL
STAFF REPORT**

TO: Honorable Mayor & Town Council	DT: May 18, 2006
FR: Robert Rodgers, Senior Planner THR: Richard Turner, AICP Planning and Zoning Administrator	RE: Final Plat East Lake Condominiums CASE #S2006-10

LOCATION: 16842 Parkview Avenue --- Plat 208, Block 5, Lot 4

REQUEST: Consider the Final Plat, Labeled “Final Plat, East Lake Condominiums”, a 3-unit commercial condominium project.

DESCRIPTION:

OWNER:	Marco A. Sotelo - Regil
APPLICANT:	Raul A. Quiros
EXISTING ZONING:	C-2
EXISTING CONDITION:	Built
LOT SIZE:	0.1377 acres (6,000 ± sf)

SURROUNDING LAND USES AND ZONING:

NORTH:	Plat 208 Commercial Plaza; Zoned “C-2”
SOUTH:	Plat 208 Commercial Plaza; Zoned “C-2”
EAST:	Plat 208 Commercial Plaza; Zoned “C-2”
WEST:	Plat 208 Commercial Plaza; Zoned “C-2”

SUMMARY:

This request is for approval of the Final Plat for “Final Plat, East Lake Condominiums”, Declaration of Condominium, which subdivides cubic airspace, and is not a land sell project. This is a basic division of an existing 3-unit commercial building and this project does not involve any off-site public improvements.

The owner, Marco A. Sotelo - Regil, has applied to convert a three-unit commercial complex and record a Declaration of Condominium in order to sell the units individually. Units range in size from 1,287 square feet to 1,344 square feet. Each unit is permitted to use the community parking.

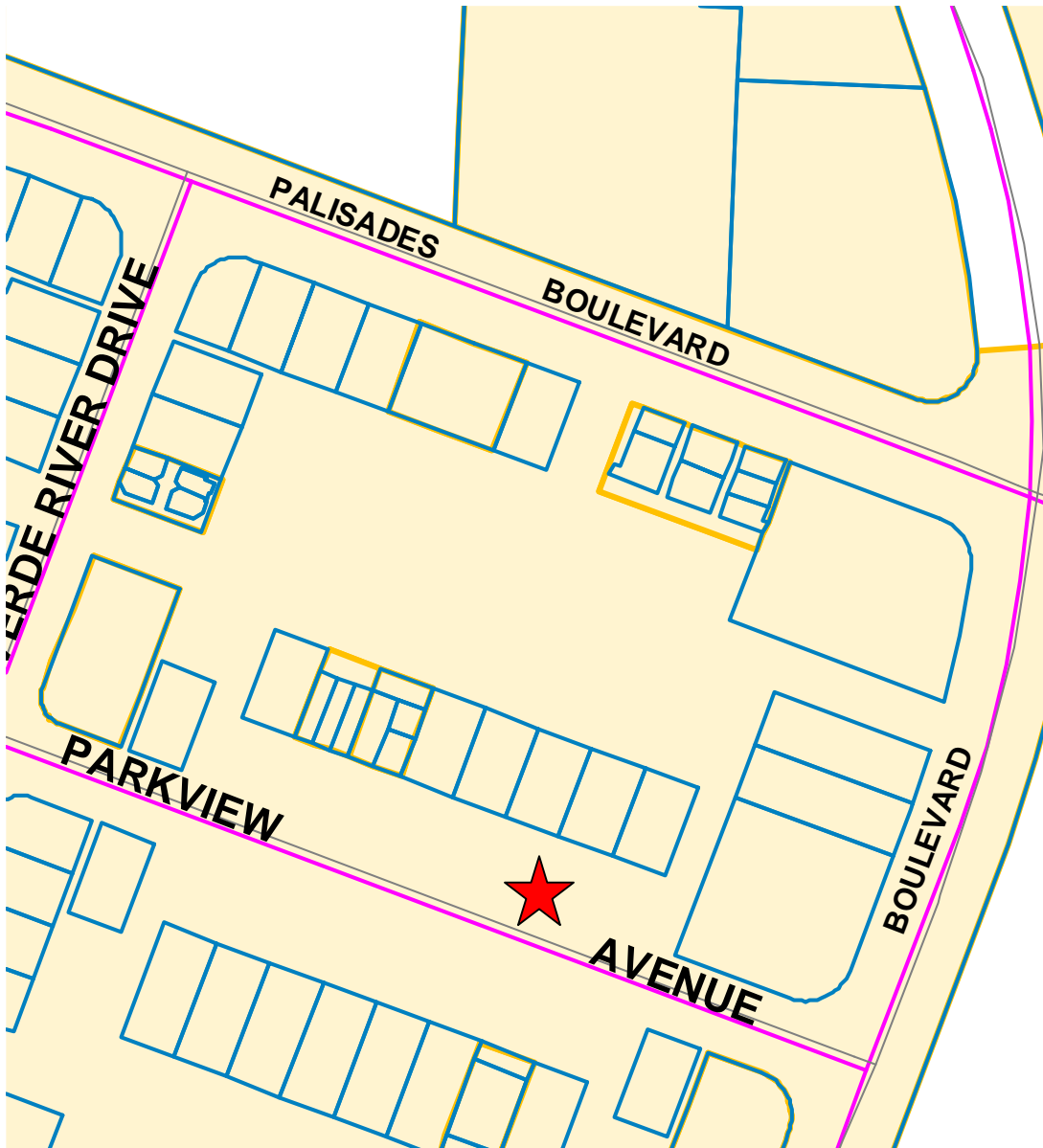
FINDINGS:

The property meets all underlying requirements of the zoning and subdivision ordinances.

RECOMMENDATION:

The Planning & Zoning Commission voted to approve the Preliminary Plat at their regular meeting of April 27, 2006.

Staff recommends **approval of Case #S2006-10; Preliminary Plat**
Labeled “Final Plat, East Lake Condominiums”



**Town of Fountain Hills
Town Council Agenda Action Form**

Meeting Type: Regular Meeting

Meeting Date: 5/18/06

Submitting Department: Public Works

Contact Person: John Morast

Consent: ☒

Regular: ☐

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|--|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input checked="" type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|--|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input checked="" type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: **CONSIDERATION** of approving a purchase agreement with Five Star Ford for a hybrid Ford Escape vehicle for the amount of \$29,275.38.

Staff Recommendation: Approve

Fiscal Impact: Yes **\$29,275.38**

Purpose of Item and Background Information: A new engineering inspection vehicle is budgeted for in the public works budget. Staff has researched gas/electric hybrid vehicles and has received positive feedback from several municipalities currently utilizing the hybrid Escape in inspection capacities. The Town purchased an Escape hybrid earlier in the year and staff is please with its performance. The engineering inspectors will utilize the new vehicle in their daily inspection duties. The use of the hybrid vehicle will save gas, because of increased fuel efficiency and will reduce emissions because at idle, the gas engine can turn off and the vehicle will run solely on its battery. Funding for the purchase of a hybrid inspection vehicle is contained in the FY 2005/2006 budget in the amount of \$30,000.

List All Attachments as Follows: Staff memo, State Procurement Office contract with Five Star Ford, Arizona Department of Administration offer of contract extension through October 31, 2006, Five Star Ford acceptance of contract extension with vehicle pricing, Five Star Ford Agreement

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager

TOWN OF FOUNTAIN HILLS
PUBLIC WORKS DEPARTMENT
MEMO

TO: Honorable Mayor and Council	DT: April 28, 2006
FR: John W. Morast, Asst. Public Works Director TH: Thomas L. Ward, Director of Public Works	RE: Purchasing Agreement with Five Star Ford

After completing a competitive bidding process, the Arizona Department of Procurement entered into a contract with Five Star Ford for Vehicles – Alternate Fuel & Hybrid. The Town is permitted to purchase a vehicle under the Arizona Department of Procurement contract without additional public bidding. By utilizing the Arizona Department of Procurement contract, the Town receives cost savings based retail value of the vehicle and on an economy of scale based on the number of vehicles the dealer is able to sell using the contract.

The Town budgeted for an alternate fuel vehicle. The budget amount for the public works vehicle is \$30,000. The Town will realize a direct savings in the amount of gas used by the vehicle, due to increase fuel efficiency. The Town will also realize a reduction of vehicle emissions from the nature of operation by the electric hybrid motor itself. The new vehicle will replace a 10-year old inspection vehicle in need of significant repairs. Five Star Ford is anticipating a June 22, 2006 delivery date. If the vehicle is not delivered prior to the end of the current fiscal year, June 30, 2006, the purchase agreement will expire and the vehicle will not be purchased.

Staff recommends approval of the purchase agreement in the amount of \$29,275.38.

**PURCHASE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
FIVE STAR FORD, INC.**

THIS PURCHASE AGREEMENT (this "Agreement") is entered into as of May 18, 2006, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Five Star Ford, Inc., an Arizona corporation ("Vendor").

RECITALS

A. After a competitive bidding process, the Arizona State Procurement Office entered into Statewide Contract Number AD040004-005, amended October 25, 2005, with the Vendor to provide motor vehicles (together the "State Contract"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

B. The Town is permitted to purchase vehicles under the State Contract without further public bidding, and the State Contract permits its cooperative use by political subdivisions including the Town.

C. The Town desires to purchase a motor vehicle under the State Contract for a lower cost than would otherwise be available.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the covenants and promises contained herein, the parties hereby agree as follows:

1. Vendor shall provide to the Town one 2006 Ford Escape Hybrid 4WD, vehicle under the terms and conditions of the State Contract in the following configuration:

1 ea. 2007 Ford Escape Hybrid 4WD @ \$26,939.76	\$26,939.76
1 ea. AC 110 Power Outlet @ \$180.00	\$ 153.00
1 ea. Floor Mats - Rear @ \$25.00	\$ 22.00
Sub-Total	\$27,114.76
Tax 7.95%	\$ 2,155.62
Tire Tax	\$ 5.00
Grand Total	\$29,275.38

2. Free on board, Vendor's place of business. **Delivery shall be not later than June 30, 2006.**

3. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

"Town"

TOWN OF FOUNTAIN HILLS, an
Arizona municipal corporation

By: _____
Timothy G. Pickering, Town Manager

ATTEST:

Bevelyn J. Bender, Town Clerk

"Vendor"

FIVE STAR FORD, INC.,
an Arizona corporation

By: _____


Name: JOE SANCHEZ

Title: Asst. Government Fleet Manager.

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular

Meeting Date: 5/18/05

Submitting Department: Administration

Contact Person: Tim Pickering

Consent: ☐

Regular: ☒

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|---|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input checked="" type="checkbox"/> Other: Council Rules of Procedure | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: **CONSIDERATION** of RESOLUTION 2006-28, revising the Council Rules of Procedure to eliminate the one meeting a month requirement. We need to change our rules as the Council will not be meeting this July. As the summer months are slow, the staff felt we should give the Council the option to not meet should the need arise.

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: A change to the Council Rules of Procedure is required to eliminate the requirement of one meeting per month.

List All Attachments as Follows: Proposed Resolution 2006-28

Type(s) of Presentation: Verbal

Signatures of Submitting Staff:

Department Head

Town Manager

Budget Review

(if item not budgeted or exceeds budget amount)

RESOLUTION NO. 2006-28

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS COUNCIL RULES AND PROCEDURES.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. The Town of Fountain Hills Council Rules of Procedure, Section 3, Meetings, subsection 3.1, Order of Business, is hereby amended as follows:

...

3.1 REGULAR MEETINGS

- A. Regular Meeting Date; Time. The Council shall hold regular Meetings on the first and third Thursday of each month at six thirty p.m. When deemed appropriate, any regular Meeting date of the Council may be changed OR CANCELLED by a majority of the Council, ~~except that at least one regular Meeting a month must be held and that such~~. Notice of the rescheduled OR CANCELLED Meeting shall be given to the public as is reasonable and practicable under the circumstances. All regular Meetings shall be held at the Town Hall Council Chambers or at such place as may be prescribed by the Mayor or the Town Manager. The Council may provide for a "Call to the Public" at such regular Meetings.

...

SECTION 2. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this resolution.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, May 18, 2006.

FOR THE TOWN OF FOUNTAIN HILLS: ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Public Works

Contact Person: Bob Rodgers

Consent: ☒

Regular: ☐

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

☐ Public Hearing

☐ Resolution

☐ Ordinance

☐ Agreement

☐ Emergency Clause

☐ Special Event

Permit

☐ Special Consideration

☐ Intergovernmental Agreement

☐ Acceptance

☐ Grant Submission

☐ Liquor/Bingo License Application

☐ Plat

☐ Special Event Permit

☒ Special/Temp Use Permit

☐ Other:

Council Priority (Check Appropriate Areas):

☐ Education

☐ Public Fitness

☐ Library Services

☐ Public Safety

☐ Community Activities

☐ Economic Development

☐ Public Works

☐ Human Service Needs

☐ Parks & Recreation

☐ Town Elections

☒ Community Development

☐ Finance

Regular Agenda Wording: CONSIDERATION of ALLOWING THE WITHDRAWAL OF A TEMPORARY USE PERMIT application to operate the Red Rock Bed and Breakfast, at 15719 E. Sycamore Drive aka Plat 603C, Block 4, Lot 1. Case# TU2005-07. **The applicant has requested their application be permitted to be withdrawn.**

Staff Recommendation: Allow Withdrawal


Fiscal Impact: No \$

Purpose of Item and Background Information: Application to permit a Bed & Breakfast in a residential neighborhood.

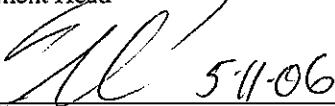
List All Attachments as Follows: Staff Reports, Application, Applicant's Narrative, Lot Plan, House Plan, Locus Map, Aerial Photo, Five Letters of Opposition

Type(s) of Presentation: None

Signatures of Submitting Staff:



Department Head




Town Manager

Budget Review
(if item not budgeted or exceeds budget amount)



**TOWN OF FOUNTAIN HILLS
PLANNING & ZONING COMMISSION
STAFF REPORT**

TO: Honorable Mayor & Town Council	DATE: May 18, 2006
FROM: Robert Rodgers, Senior Planner 	RE: Red Rock Bed & Breakfast Case #TU2005-07

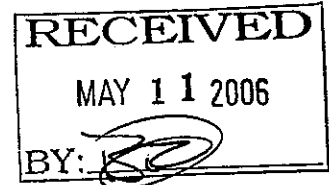
LOCATION: 15719 E. Sycamore Drive, Plat 603C, Block 4, Lot 1. (APN #176-16-282)

REQUEST: Consider a Temporary Use Permit to allow the operation of a Bed & Breakfast for a period of up to two years.

Please be informed that the applicants for the above-noted Temporary Use Permit have requested that they be permitted to withdraw their application, without prejudice, at this time.

May 11, 2006

Richard A.G. Turner, AICP
Planning and Zoning Administrator
Town of Fountain Hills, Az. 85268



Re: TU2005-07- Red Rock Bed and Breakfast

Dear Sir:

At this time we would like to withdraw our application for a Temporary Use Permit. We would like to reserve the right to re-apply sometime in the future.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. A. Nann".

Robert A. Nann
15719 E. Sycamore Dr.
Fountain Hills, Az. 85268
480-816-4446



**TOWN OF FOUNTAIN HILLS
PLANNING & ZONING COMMISSION
STAFF REPORT**

TO: Honorable Mayor & Town Council	DATE: May 18, 2006
FROM: Robert Rodgers, Senior Planner THR: Richard Turner, Planning & Zoning Administrator	RE: Red Rock Bed & Breakfast Case #TU2005-07

LOCATION: 15719 E. Sycamore Drive, Plat 603C, Block 4, Lot 1. (APN #176-16-282)

REQUEST: Consider a Temporary Use Permit to allow the operation of a Bed & Breakfast for a period of up to two years.

DESCRIPTION:

OWNER: Robert & Suzanne Nann
APPLICANT: Robert & Suzanne Nann
EXISTING ZONING: R1-35
EXISTING CONDITION: Owner-Occupied Single-Family Dwelling
LOT SIZE: 45,695 Square Feet (1.049 Acres)

SURROUNDING LAND USES AND ZONING:

NORTH: Single-Family Residences – “R1-8” Zoning
SOUTH: Sycamore Wash – “R1-35” Zoning
EAST: Single-Family Residences – “R1-35” Zoning
WEST: Single-Family Residences – “R1-35” Zoning

SUMMARY:

Robert & Suzanne Nann have requested that a TEMPORARY USE PERMIT be issued to allow them to operate a Bed & Breakfast at their home located at 15719 E. Sycamore Drive. The property is on the south side of the Sycamore Drive and backs up to Sycamore Wash.

The property also has a fenced swimming pool. The remainder of the rear yard is not fenced.

This permit would have allowed the applicant to operate a Bed & Breakfast for a period of two years. However, this Temporary Use Permit application was protested, thereby requiring a hearing by the Town Council.

Five letters of protest were received and are included with this report. The concerns noted were traffic, noise, and that the use is out of character with the neighborhood.

Town Council must now determine whether or not to permit the issuance of the Temporary Use Permit.

PROPOSAL:

The applicants wish to operate a Bed & Breakfast. The proposed maximum number of guests is one at a time, or one small family at a time. One guest vehicle will be allowed to park in the existing driveway.

The applicant cites past experience in business and community service as qualifications for successfully running the Bed & Breakfast.

ANALYSIS:

Section 2.03.D.4 of the Zoning Ordinance requires that the Town Council hold a public hearing regarding any temporary use permit application that receives a written protest.

Under Section 2.03 of the Zoning Ordinance, in order to grant a temporary use permit, the findings of the Council must be that the establishment, maintenance, or operation of the use applied for will not be detrimental to the public health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use, nor shall it be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the town.

Section 10.03.B of the Zoning Ordinance allows Bed & Breakfasts within residential zoning districts by Temporary Use Permit subject to three conditions:

1. No more than two (2) bedrooms per residence may be used for the business.
2. No more than two (2) persons per room.
3. One off-street, non-tandem parking space per bedroom.

The Fountain Hills Zoning Ordinance also allows that reasonable conditions may be imposed upon temporary use permits. The Council may designate such conditions in connection with the temporary use permit as it deems appropriate to secure the intent and purposes of the zoning ordinance and may require guarantees and evidence that the applicant will comply with the conditions placed upon the temporary use permit.

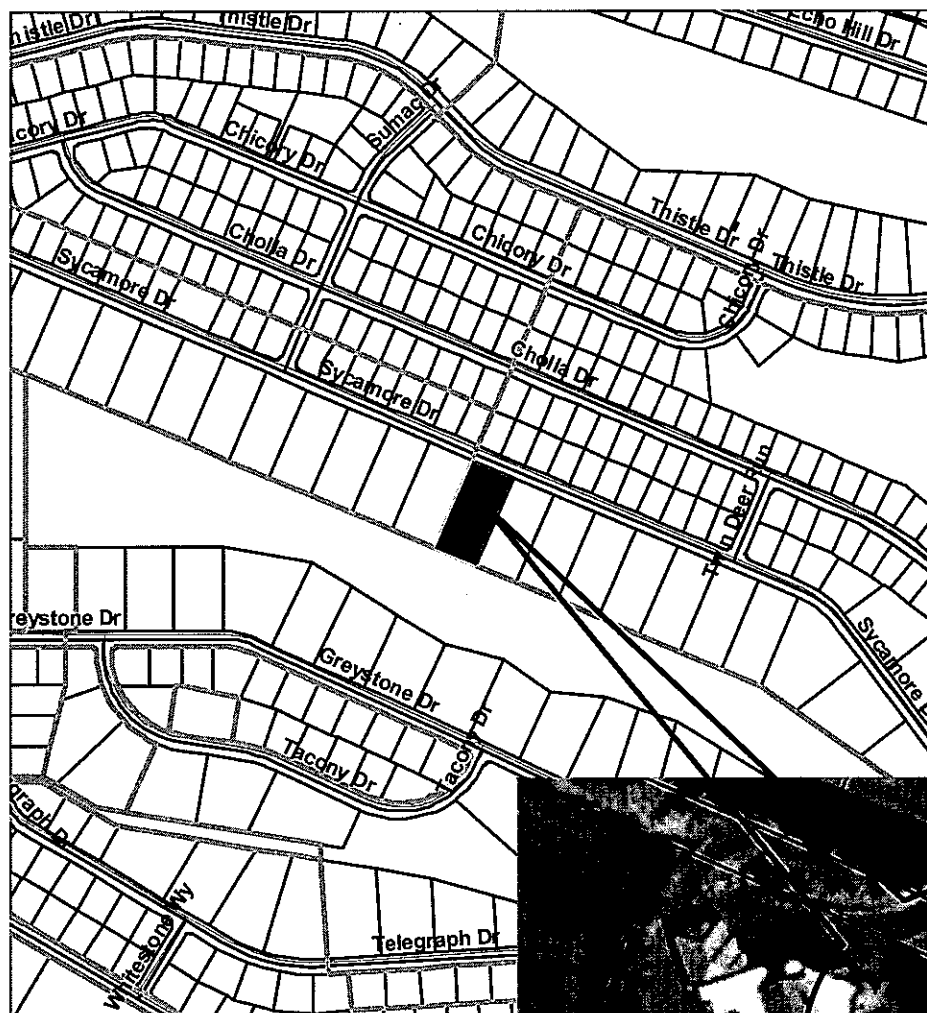
A temporary use permit issued by the Town Council becomes effective either the day after the Council's decision if no conditions for operation are outstanding; or, the day after any outstanding conditions are met.

A time limit must be established for this use as conducted under the temporary use permit. At no time can a temporary use permit be granted for more than two (2) years.

Temporary use permits may be revoked by the Town Council if any of the conditions or terms of the permit are violated, or if any law or ordinance is violated.

RECOMMENDATION:

Staff does not recommend that the Temporary Use Permit be granted due to its incompatibility with the existing single-family residential neighborhood. (Case #TU2005-07)





The Town of Fountain Hills

PLANNING & ZONING DIVISION - APPLICATION

Not write in this space - official use only
Filing Date 4/20/05
Accepted By RECEIVED
Fee Accepted RECEIVED
Case Manager Richard J. Jones
APR 26 2005

Processed FOUR: PLANNING & ZONING
TU Permit filed.
CK #2713 (\$200.00)

- | | |
|--|---|
| <input type="checkbox"/> Abandonment (Plat or Condominium) | <input type="checkbox"/> Administrator's Interpretation or Appeal |
| <input type="checkbox"/> Area Specific Plan | <input type="checkbox"/> Condominium Plat |
| <input type="checkbox"/> Continuance Request | <input type="checkbox"/> Cut/Fill Waiver |
| <input type="checkbox"/> General Plan Amendment | <input type="checkbox"/> HPE Change or Abandonment |
| <input type="checkbox"/> Planned Unit Development | <input type="checkbox"/> Preliminary / Final Plat |
| <input type="checkbox"/> Rezoning | <input type="checkbox"/> Special Use Permit |
| <input checked="" type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Other _____ | <i># Completed submittal Rec'd 5/29/06</i> |

PROJECT NAME / NATURE OF PROJECT:

Red Rock Bed and Breakfast

LEGAL DESCRIPTION: Plat Name 603C Block 4 Lot 1
PROPERTY ADDRESS: 15719 E. SYCAMORE DR. Fountain Hills
PARCEL SIZE (Acres) 1.049 ASSESSOR PARCEL NUMBER 176-16-282
NUMBER OF UNITS PROPOSED _____ TRACTS _____
EXISTING ZONING R-1-35 PROPOSED ZONING _____

Applicant

Until May 15, 2005
Mrs. Robert NANN 732 Day Phone 489-7650
☒ Mr. _____
Ms. Address: 4502 Stonehenge Rd. City: Edison State: NJ Zip: 08820
Email: ADMIRAL671@AOL

Owner

AFTER May 18, 2005
Mrs. Robert NANN Day Phone 480-816-4446
☒ Mr. _____
Ms. Address: 15719 E. SYCAMORE City: Fountain Hills State: AZ Zip: 85268

If application is being submitted by someone other than the owner of the property under consideration, the section below must be completed.

SIGNATURE OF OWNER [Signature] DATE 4/20/05

I HEREBY AUTHORIZE _____ TO FILE THIS APPLICATION.
Please Print

Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public My Commission Expires _____

Case Number
TU 2005-07

Bob & Suzanne Nann
15719 E. Sycamore Drive,
Fountain Hills, AZ 85268

RECEIVED
MAR 29 2006
FOUNTAIN HILLS
PLANNING & ZONING

January 26, 2006

To Whom It May Concern:

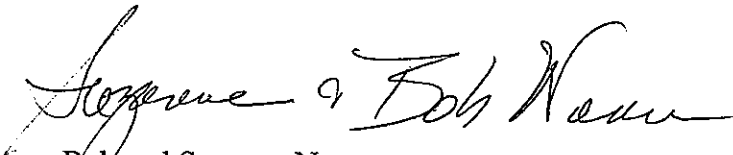
My husband Bob and I wish to host an intimate and special Bed and Breakfast in our Fountain Hills home at 15719 E. Sycamore Drive. We feel our home is ideally suited for a small guest home due to it's floor plan where the guest would have a very private bedroom and bath with outdoor patio. We would invite one guest or one small family at a time and enjoy sharing our joy of living in beautiful Fountain Hills. We would take great care to maintain the tranquility of our lovely neighborhood.

We come to this fine community from the East Coast with backgrounds in business and community involvement. Bob and I owned a real estate company for 35 plus years in Metuchen, New Jersey, just 25 miles south of New York City. Bob is a former Marine who is a member of American Legion Post #65, Elks Club # 1914 B.P.O.E. and Mount Zion Lodge # 135. He served as a church elder, on the Board of Directors of the YMCA and was a Superior Court appointed Commissioner for condemnation land use cases.

We were both highly involved with our local Chamber of Commerce, promoting business and hosting local events. We were instrumental in raising funds to rededicate our Metuchen Memorial Veterans Park and coordinated Memorial Day Parades and ceremonies for fifteen years. I was the Metuchen Chamber Vice President in 2005 and the Chamber Citizen of the Year in 1999. I also served our Church and was acting president of a Shared Living Home, Beringer House.

We are including floor plans of our home to show the adaptability of the Bed and Breakfast use. We thank you for your time and consideration.

Sincerely,



Bob and Suzanne Nann
480-816-4446
Mobile: 480-586-5702

SCALE: AS SHOWN

CONTOUR INFORMATION WAS OBTAINED FROM
PUBLIC USGS MAPS AND RECORDED
MARICOPA COUNTY INFORMATION.

NANN/ROBERT JR/SUZANNE
15719 E. SYCAMORE DRIVE
FOUNTAIN HILLS, ARIZONA 85268

THAT PORTION OF LOT 25, FOUNTAIN HILLS FINAL PLAT NO. 603-C, ACCORDING TO THE BOOK 161 OF MAPS, PAGE 43, RECORDS OF MARICOPA COUNTY, ARIZONA.

LOT AREA	80,916 Sq. Ft.
ZONED	R1-35
MAX COVERAGE	N/A
NEW COVERAGE	N/A, AS EXISTING

NOTE: THIS PLOT PLAN WAS CREATED USING
OFFICIAL RECORDED INFORMATION FROM
MARICOPA COUNTY RECORDS. THIS DRAWING IS
NOT A BOUNDARY SURVEY. THIS DRAWING IS
NOT A TOPOGRAPHIC SURVEY.

LOT 2

SCALE: NOT TO SCALE

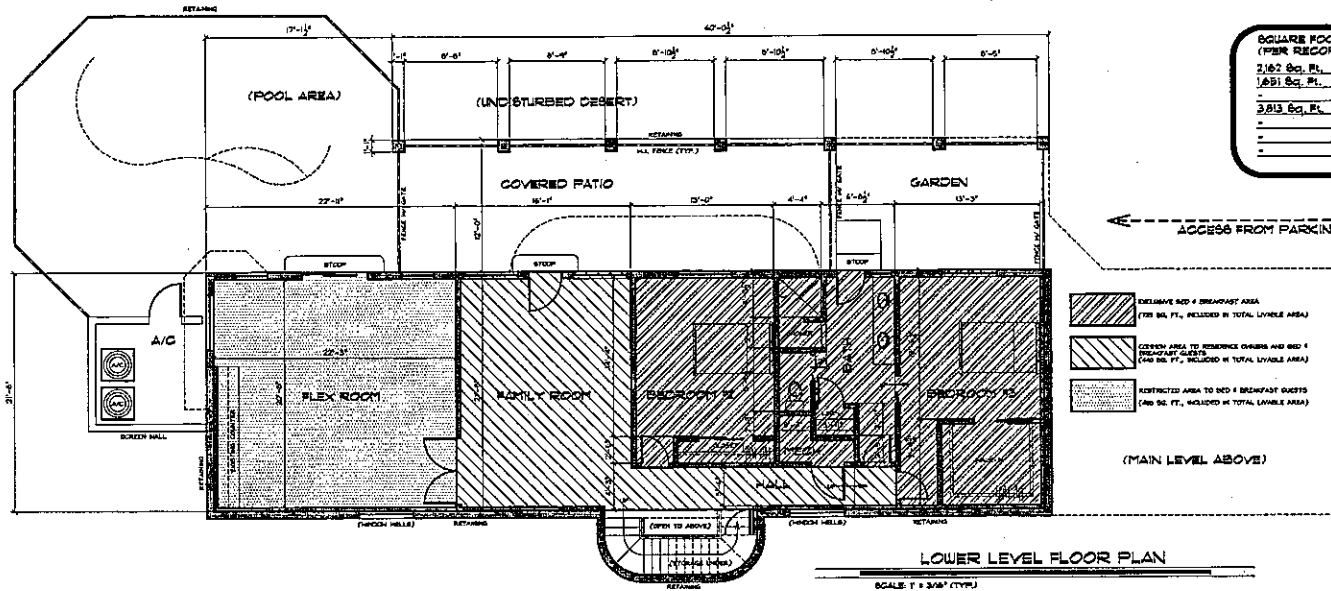
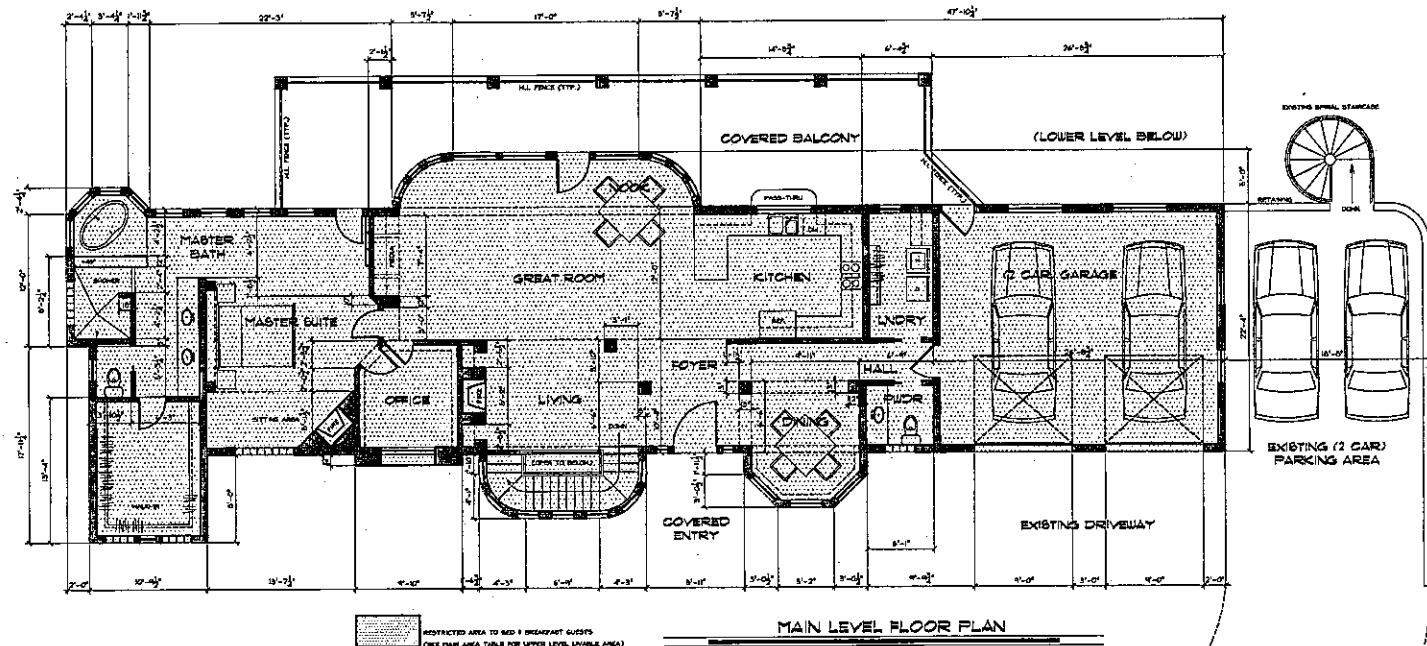
AN EXHIBIT DOCUMENT OF AN EXISTING RESIDENCE FOR.

SUZANNE & BOB NANN
1519 E. SYCAMORE DRIVE
FOUNTAIN HILLS, ARIZONA 85268

delineation residential

160320 E. LAZER DR, SUITE #6, FOUNTAIN HILLS, ARIZONA 85268

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SQUARE FOOTAGE AREAS: (FROM RECORDS OF MARICOPA COUNTY)	
2,167 SQ. FT.	MAIN LEVEL LIVABLE
1,651 SQ. FT.	LOWER LEVEL LIVABLE
3,813 SQ. FT.	TOTAL LIVABLE

AN EXHIBIT DOCUMENT OF AN EXISTING RESIDENCE FOR:

SUZANNE & BOB NANN
15718 E. SYCAMORE DRIVE
FOUNTAIN HILLS, ARIZONA 85268

delineation residential
a custom architectural design and drafting company

PROJECT INFORMATION:

DATE: 6/20/23

CREATED BY: TH

CHECKED BY: TH

JOB NUMBER: 176-16-252

SCALE: AS SHOWN

ISSUED: 6/20/23

APPROVED:

REVISION HISTORY:

DATE: 6/20/23

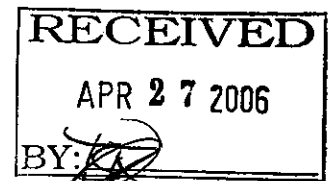
DESCRIPTION:

SHEET 1

TO: The Fountain Hills Planning Commission 4/27/06

COPIES TO: *Personal Files for Now*

*ATTENTION: Robert Rogers, Senior Planner
16705 e. Avenue of The Fountains
Fountain Hills, Arizona 85268*



*ATTACHEMENT: The Fountain Hills TIMES
Issued Wednesday, April 26, 2006
**(See The Front Page article titled
"Quality of Life")***

FROM: *Terence E. McAfee*

Gentlemen:

The main purpose this letter is to advise you that I have had no response to my letter of protest against CASE # TU2005-07, dated 4/15/06. The secondary purpose of this letter is to request additional information about the Case, which I am sure you must have had on file before you proceeded with the application.

***With Regard to No Response:** I would appreciate a letter of recognition that my protest against this case is being processed. I would appreciate receiving written notice of the date for a Town Council in sufficient for me to prepare my full response to the Case and to conduct open discussion with the Council and with the group that I requested be present..*

With Regard to Additional Information:

*Please provide me with a complete copy of the **Business Plan** (that surely must have been filed with Case #TU2005, as a Town code requirement for opening a new business). In preparation for my discussion with the Town Council et.al. I would like to know the proposed cash flow and profit vs .income of the property.*

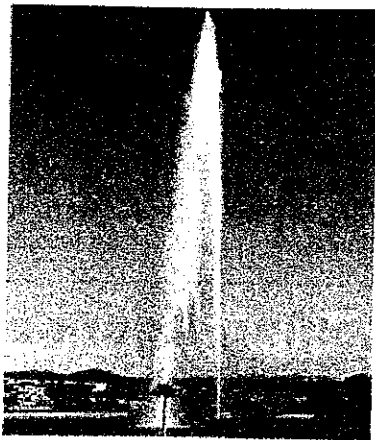
I would also appreciate being advised of how much of the profit is due to depreciation and "business" tax write off for Federal and State income and property taxes on an annual basis.

Also, I would appreciate your providing me with the information previously requested in my letter dated 4/15/06.

Sincerely yours,

A handwritten signature in cursive script, reading "Terence E. McAfee". The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

Terence E. McAfee
15746 E. Sycamore Drive
Fountain Hills, Arizona 85268
Telephone: (480) 816-5885



T *The Fountain Hills* **TIMES**

www.fhtimes.com - Read news updates daily at 4:30 p.m.

Wednesday, April 26, 2006

\$1.00

Quality of Life **Town is named best in** **regional, national lists**

By Barb Charzuk *Times Reporter*

With two accolades of best place to live and retire under its belt, the town counts on an economic boost from the regional and national attention.

"Phoenix" magazine chose Fountain Hills the best place to live among 10 communities in the Greater Phoenix area.

The May 2006 issue describes the town as "a welcome oasis on the outskirts of a metropolis."

For the second consecutive year, the magazine measured 22 Valley communities on quality of life factors: crime rates, tax rates, home prices, school performance, miles to Sky Harbor Airport and square feet of retail space. The list was narrowed down to the top 10.

Fountain Hills jumped from No. 5 last year to the top spot in 2006.

The other rankings are 2, Carefree, 3, Cave Creek, 4, tie for Paradise Valley and Scottsdale; 6, tie for Gilbert and Tempe; 8, Peoria; 9, Queen Creek, and 10, Litchfield Park.

The same criteria came into play for best retiree locales. NeighborhoodScout.com is a Web site that lets visitors compare communities. Fountain Hills was ranked among the top 15 towns

near a metro area to retire "if money's no object."

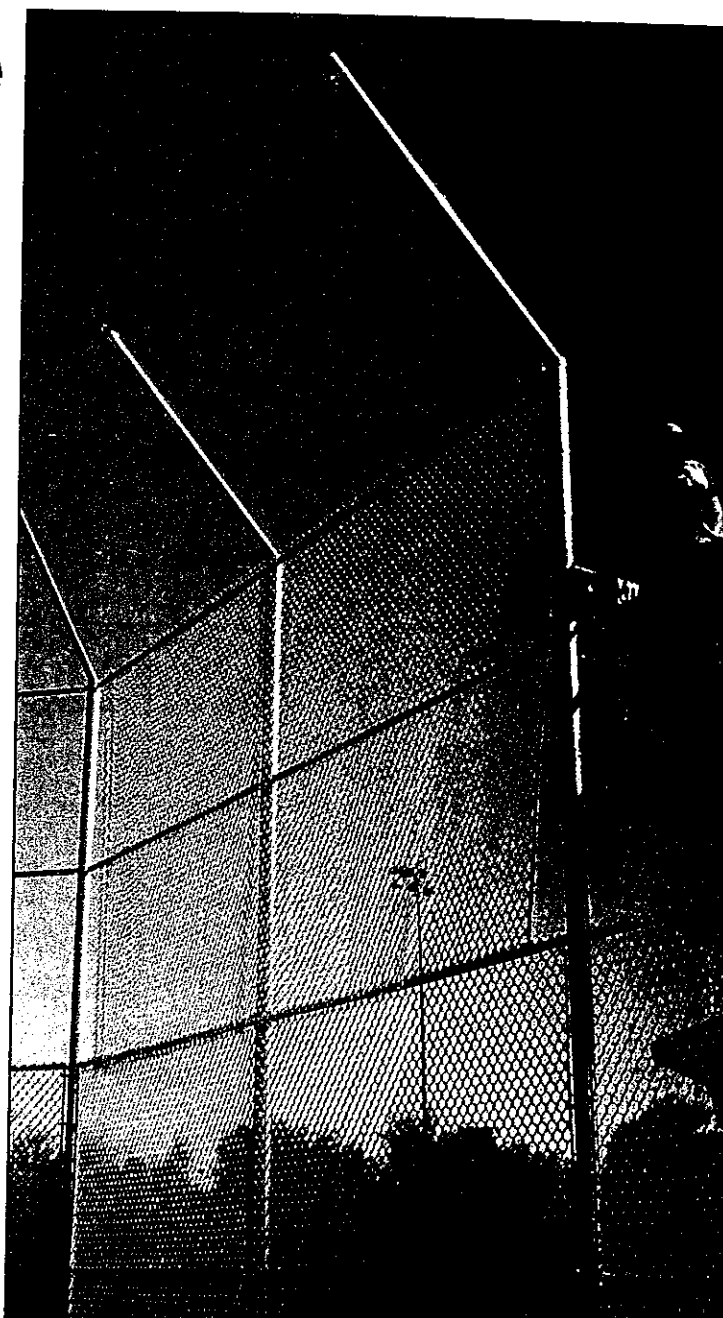
Chamber of Commerce President Frank Ferrara said the regional and national publicity is "something that can be channeled into economic impact."

"The whole idea is to try to get people here. We know that with our ambience, we have what it takes. We don't have to sell the town. All we have to do is to bring people here and I'm sure we're going to be successful with that," said Ferrara.

Mayor Wally Nichols said he is proud to represent the "Valley's best community in which to live."

"We appreciate the recognition by Phoenix magazine of what every resident in our town already knows," said Nichols.

"This is truly a great community with a strategic plan for its future, an impressive school system, a high level of volunteerism, quality developments and a unique combination of a



(cont. on Page 7A)

Quality

(cont. from page 1A)

small-town feeling with highly sophisticated amenities."

Town Manager Tim Pickering said the Phoenix magazine article "confirms statistically that we have a unique standing in the Valley, but the other side of the story is the spirit, talent and enthusiasm of the citizens and businesses who call Fountain Hills home."

"There is a charm and beauty about Fountain Hills unsurpassed in the Valley," said Pickering.

Phoenix editor Robert Stieve said the magazine has 65,000 paid subscribers and a readership of about 320,000. The magazine also is sold on retail newsstands and in book stores.

Stieve thinks newcomers might appreciate the comparisons to determine where to live.

"I think it could help people rather than throwing a dart at the map," said Stieve, a Valley resident since the late '80s. He said he has not recently visited Fountain Hills.

Stieve recalled that his publication printed a headline in

March 1972 that "Fountain Hills is roomy and ready."

The ad touted the McCulloch Company's newest master-planned community, which featured the world's highest fountain. The advertisement went on to say that "within Fountain Hills' 19 square miles of scenic grandeur, the groundwork has been laid for a harmonious blend of man and nature. Those with imagination can now envision the end result: a low-density population, sheltered in a protected environment."

What's the negative about the town?

"It's easy to miss," states the article. "Because it's so close to Scottsdale, people miss out by never driving far enough east on Shea Boulevard to get there."

Mayor Nichols plans to change that by erecting signs along Shea Boulevard telling motorists that Fountain Hills is the best place to live.

The profile describes Fountain Hills with a \$61,619 median household income, \$465,000 median home price and property tax rate of \$9.08. Violent crimes totaled 12; non-violent crimes tallied 619.

The student/teacher ratio was reported at 13.1. The town has 8.6 million of square feet of re-

tail and 3.6 park acres for every 1,000 residents. The town is 25 miles from Sky Harbor airport.

Advertising and marketing specialist Tom Garrett believes the publicity and attention will "definitely" aid economic development.

"I see a trend that is being driven by the quality of life issues," said Garrett, president of inOne Advertising. He moved his firm within the last year from Scottsdale to Fountain Hills.

"Most definitely it is an advantage in the recruitment effort for businesses," said Garrett. He said business executives looking to locate, evaluate quality of life issues that contribute to living and working in a community.

The favorable publicity, said Garrett, will "make them come here and take a look for themselves."

The Chamber of Commerce plans to publicize it is the "Best Place to Live" on its Web site.

The day after he learned about the No. 1 magazine rating, Ferrara told area Realtors that the publicity should attract visitors.

"If we don't have people, we don't sell houses. We don't sell anything so the whole idea is to try to get people here. We know that with our ambience, we have what it takes," said Ferrara.

"We don't have to sell the town. All we have to do is to bring the people here and I'm sure we're going to be successful with that."

Ferrara said the polls confirm that the town is "not some little Podunk town in the sticks. We are a region and we're here to stay."

Top retirement locale

Selection of the top towns for

Schiller used a variety of criteria to create his list of best retiree locales, among them FBI and U.S. Justice Department crime statistics.

To find quiet areas, Schiller measured population density. "Peace and quiet means a little less densely populated, but also somewhat fewer college students and small children, so a little bit quieter," he said.

These locales also have a high proportion of college-educated residents, Schiller said.

The communities all are within 75 miles of the city center, and they all offer an array of housing options, including single-family homes, condominiums and rental units.

Schiller created two lists: One is the best towns for retirees, based on the criteria detailed above, in the 15 biggest metro areas nationwide, regardless of housing costs.

A second list takes housing costs into account, detailing the best places that are also a good value.

To see the other best towns in 15 metro areas, go to www.neighborhoodscout.com/neighborhoods/retirement.jsp.

Coalition

(cont. from page 5A)

Nation, Paradise Valley, Salt River Pima-Maricopa Indian Community and the City of Scottsdale.

Rob Evans, director of the Governor's Office of Substance Abuse Policy, will provide information about the impact of methamphetamine use and possible methods for addressing the problem.

Mayor's co answers a skate park

By Bob Burns
Times Reporter

Mayor Wally Nichols' monthly coffee meeting on April 19 featured an unexpected special guest when Maricopa County Sheriff's Capt. John Kleinheinz dropped by.

Kleinheinz, commander of the Sheriff's District 7 base in Fountain Hills, was able to field residents' questions about recent vandalism and other criminal activity attributed to juveniles.

"I want to make it clear that we have two or three small groups of juveniles causing problems and giving all kids bad name," Kleinheinz said.

The Sheriff's Office is spearheading a new effort to address juvenile crime in Fountain Hills. The town's Parks and Recreation Department, School District and Boys and Girls Club are joining in the effort and they are planning to work closely with the town prosecutor's office.

Kleinheinz said he would like to develop a program that has an impact on parents as well as the kids. He said he is looking into whether the parent can be required to perform community service along with the child. Also, the parents could be made to pay restitution for criminal damage.

Several people attending the session agreed that parents

Letters

(cont. from page 6A)

liver meals only once per month (one and a half hours per month) to our Home Delivered Meals clients.

This is a short-term opportunity for the months of May, June, July, August and perhaps

We appreciate your support in helping our children discover and achieve their greatest potential.

Back home!

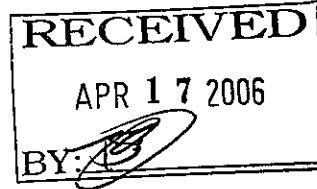


A letter from:
Len & Fran Modder

Our son, Lt. Col. Donald J. Modder, has returned home



TOWN OF FOUNTAIN HILLS PUBLIC NOTICE



NOTICE IS HEREBY GIVEN that Bob & Suzanne Nann have requested that a TEMPORARY USE PERMIT be issued to operate a Bed & Breakfast at the property located at:

**15719 E. Sycamore Drive
Fountain Hills, AZ 85268**

A complete copy of the proposal is available for viewing in the Fountain Hills Planning & Zoning Office, Monday through Friday, 8:00 AM – 5:00 PM.

The Town of Fountain Hills will receive written notice of appeal/protest until **5:00 PM, April 17, 2006**. Any written notice of appeal containing the name, address, telephone number and signature of the objector must be made to:

Town of Fountain Hills
Robert Rodgers, Senior Planner
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

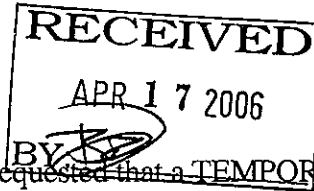
(Case #TU2005-07)

I oppose this application. This sets a precedent for the entire community and is contrary to zoning restrictions and covenants for this development.

*John M. Riley
15617 E Sycamore Dr
Fountain Hills, AZ*



TOWN OF FOUNTAIN HILLS PUBLIC NOTICE



NOTICE IS HEREBY GIVEN that Bob & Suzanne Nann have requested that a **TEMPORARY USE PERMIT** be issued to operate a Bed & Breakfast at the property located at:

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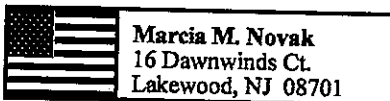
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Town of Fountain Hills
Robert Rodgers, Senior Planner
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268

(Case #TU2005-07)

I bought the land at 15653 E. Sycamore Drive to be used for residential purposes only and I feel that a Bed & Breakfast is not beneficial to this area.

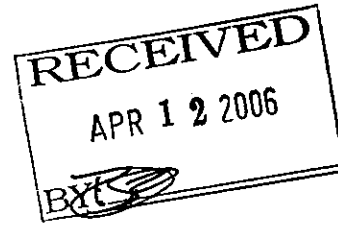
Therefore, I am opposed to the issuance of the requested permit.



*Marcia M. Novak
16 Dawnwinds Ct.
Lakewood NJ 08701
(732) 255-9560*

Bonnie J. Lewis & David Bugniazet
12076 N. Chama Drive, Fountain Hills, Arizona 85268-4406
Ph.: 480.816.6590 Fax: 480.816.1832

April 11, 2006



Robert Rodgers, Senior Planner
Town of Fountain Hills
16707 E. Avenue of the Fountains
Fountains Hills, Arizona 85268

RE: TEMPORARY USE PERMIT: 15719 E. Sycamore Drive, Fountain Hills, AZ
85268 (Case # TU2005-07) and NOTICE OF APPEAL/PROTEST

Dear Mr. Rodgers:

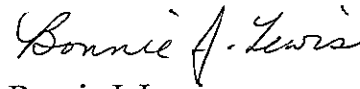
As the property owners of 15646 E. Greystone Drive, Fountain Hills, AZ 85268, we respectfully oppose Bob & Suzanne Nann's request for a Temporary Use Permit for a Commercial enterprise within a residential area.

We purchased in this specific residential area for its serene family nature. At no time were my wife and I informed that this would or could become anything other than a strictly residential family area. We protest the request to add a commercial element to our neighborhood.

Thank you for the notice and opportunity to appeal.

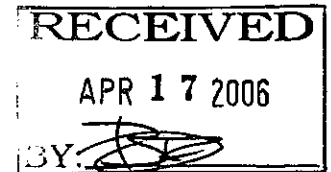
Regards,


David Bugniazet


Bonnie J. Lewis

To: The Town of Fountain Hills—Dated 4/15/06

Attention: Robert Rodgers, Senior Planner
16705 E. Avenue of the Fountains
Fountain Hills, Arizona 85268



From: Terence E. McAfee,
15746 E. Sycamore Drive
Fountain Hills, Arizona 85268

Telephone: (480) 816-5885

**Subject: Written Appeal And Protest To The Town Of
Fountain Hills Public Notice Regarding Operation of a
“Bed & Breakfast” at 15719 E. Sycamore Drive in
Fountain Hills Arizona, 85268 (Case #TU2005-07)**

Gentlemen,

My concerns about your proposed project exist at several levels as described in this letter. For purposes of communicating clearly with you, let's break these concerns down into the following topics for discussion with your self and the Town Council:

1. Business in a Residential Area
2. Safety Issues of a Bed & Breakfast on Sycamore Drive
3. Property Depreciation
4. Politics
5. Enforcement of existing Town Codes

It is very important to hold these detail discussions about Case #TU2005-07. Not only is it important for the residents living on Sycamore Drive but also for the rest of the citizens living in Fountain Hills. We are approaching some monumental changes to our town. With the State Land annexation and its impact on us, we need to know who is responsible and accountable for enforcing Town Codes...and who has the authority to change them.

Discussion #1- Business in a Residential Area

Most people purchase homes in Fountain Hills because of the natural beauty and quietness of the surrounding residential areas. If you begin to lose this, for whatever reason, it will be the beginning of the end for one of the best residential areas left in the United States.

Before I go further with this discussion, let me ask you a question...Are there other businesses in residential areas of Fountain Hills? If so, please provide me with a complete list of the business names, type of business, and the addresses, along with the Town Map location. If this is not your area, please tell me who is responsible for maintaining this data. I will need to have this information when talking to the Town Council about (Case #TU2005-07).

My experience with these types of code situations in a residential community is that they tend to grow.

For example, there is a vacant lot right across the street from the proposed bed and breakfast location (15719 Sycamore Drive). Should we put a Denny's on this lot so that we don't have to go all the way down to the one next door to the Comfort Inn?

***In summary about business in a residential area--
We need to start focussing on the environment in
Fountain Hills.... And keep it one of the best
residential areas in the United States.***

Discussion #2 -Safety Issues

I know that you have all driven Sycamore Drive many times...and therefore are fully aware that it is one of the best laid out streets in Fountain Hills **for speeders**. This makes it a bad place for a Bed & Breakfast.

From Thistle at the top, it's down the straight stretch, to the curves, dips and blind spots in the canyon and then steeply up to a stop sign at Ocotillo where Sycamore ends. It is one long, exciting stretch for speeders. It is a clear and present danger to unfamiliar drivers.

I watch speeders every day on Sycamore. I can clearly see their faces and can fairly guess their speeds. Early morning it often hits 50 to 60 MPH for

the “have to beat the traffic” to work group. Late at night it often hits the 50 to 60 MPH ranges again as mostly teenagers “have to show how powerful” their cars are.

The worst speeding is during the day. Moms with kids in SUV’s and construction or service trucks consistently doing 35 to 45 MPH.

Enough about the probability in stochastic processes... Let’s get directly to the real point of concern here. The bad news is that Sycamore Drive is exactly 26 feet wide (curb to curb) all the way from Thistle to Ocotillo. One car parked on the side of Sycamore Drive needs a minimum 6 feet for the car and 2 feet for clearance.

This means that one parked car requires 8 feet of the 26 feet available. When one additional car is parked directly across the street from that car, another 8 feet has been used up. It is very common for this situation to exist.

If you take 16 feet from 26 feet it leaves you exactly 10 feet of width on Sycamore Drive for moving cars to pass each other. In reality it actually requires a minimum of 20 feet for safe passage of two moving cars. Couple this data with the speeders and the arithmetic is all too clear.

Now, given the above data, take a really good look at the plan submitted to the Planning Commission for a Bed & Breakfast (#TU2005-07)

on Sycamore Drive. Then drive out and take an actual look at the steep driveway at 15719 E. Sycamore.

You can't see it in the plan but the arrangement of both the house and the driveway are definitely not conducive for easy parking and turn around. With no Bed & Breakfast, there are already three cars in the tiny spot at the bottom of the driveway. A Bed and Breakfast would absolutely demand more on street parking, regardless of what it says in the plan...or what anyone says.

In a summary for Safety...parking and speeding is already a danger on Sycamore. Not only should we not add to it, but we should also take some steps in the near future to cure the ills we already have.

THE TRAFFIC SIGN IN FRONT OF MY HOUSE SAYS SPEED LIMIT 25 MPH. If locals don't see it or care about it, what will strangers do????

DISCUSSION ITEM #3- PROPERTY DEPRECIATION

I love my home in fountain Hills. If you put any kind of business on Sycamore you will cause serious depreciation in property values all along both sides of the street. Potential buyers will say no thank you.

I estimate the potential loss at more than \$50,000 per home.

In summary for property depreciation... I strongly suggest you put together a Fountain Hills Board of Realtors. Ask them for specific facts about the impact of Case # TU2005-07 on all nearby property values. Also ask them about the probable increase in turn around times for selling.

DISCUSSION ITEM # 4 --POLITICS

Sometimes issues like we are addressing here, arise due associations or relationships that the requestor may have with clubs, organizations. Chamber of Commerce, Town Staff or Town Council. I hope that is not the case here. But I would like some answers to questions I have in this area directly from the Town Council.

For example...it is inconceivable to me that the employees or Town Council in Fountain Hills can let a project like case #TU2005-07 go this far without a complete environmental analysis dealing with safety and economics for other property owners in the area.

If there is a good explanation I want to hear it.

In summary for the politics discussion—I am really concerned that Town operations in Fountain Hills may be subject to influence dealing.... From speed bumps to control speed in certain residential areas and not in others to the mish mash in the trash pick up system. Please give me some data that will help me believe otherwise.

DISCUSSION ITEM # 5 ENFORCEMENT OF CITY CODES

Who is responsible for enforcing Town codes on residential street parking and on residential property use in general? It would appear to the casual observer that either there are no codes or that they are not enforced.

In Summary on Town Codes—what are they and who is responsible for enforcing them in the case of #TU5005-07?

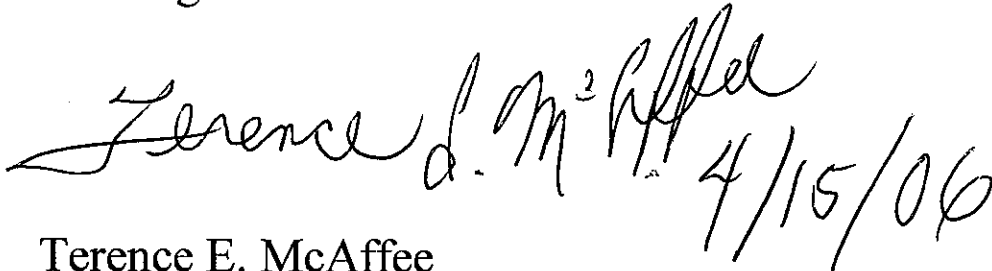
Thank you for your time in reading this letter. I would appreciate the opportunity to address the Town Council at the earliest possible time. Maybe they can enlighten me about some of these concerns and assure me there is nothing to worry about.

I would appreciate your supplying me with the data requested above or tell how and from whom I can get the data.

I would also really appreciate it if we could set up a team meeting with the following personnel present at the same time:

1. A member of the Fountain Hills Realty Board
2. A Town Hall Employee for Code Enforcement
3. A member of Fountain Hills Planning
4. The Maricopa County Sheriffs Department
5. The full Fountain Hills Town Council
6. Representatives from residents on Sycamore

Please give me a call....

A handwritten signature in cursive script that reads "Terence E. McAfee" followed by the date "4/15/06".

Terence E. McAfee
15746 E. Sycamore Drive
Fountain Hills, Az 85268

Telephone: 480-816-5885 (any time)

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: May 18, 2006

Submitting Department: Administration

Contact Person: Megan Griego, ED Specialist

Consent: ☒

Regular: ☐

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|---|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input checked="" type="checkbox"/> Other: Contract | | |

Council Priority (Check Appropriate Areas):

- | | | |
|--|---|--|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input checked="" type="checkbox"/> Economic Development |
| <input checked="" type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input checked="" type="checkbox"/> Community Development | |

Regular Agenda Wording: **CONSIDERATION** of approving a sub consulting construction-services **CONTRACT** with the WLB Group, Inc., for field surveillance, electrical engineering services, structural engineering services, drafting services, and structural inspection in the amount of \$45,000.

Staff Recommendation: Approve

Fiscal Impact: Yes \$45,000

Purpose of Item and Background Information: With Town Council's approval of the construction contract with Ardavin Builders, Inc., on April 6, 2006, for the Avenue of the Fountains Enhancement Project, staff has identified a need for additional expertise. Since April 6, staff has negotiated the following services with WLB Group, Darcor Electrical Engineers, CST, Consulting Structural Engineers: field surveillance, electrical engineering services, structural engineering services, drafting services and specialty inspections.

With Town Council's approval of the construction contract with Ardavin Builders, Inc., on April 6, 2006, for the Avenue of the Fountains Enhancement Project, staff has identified a need for additional expertise. Since April 6, staff has negotiated the following services with WLB Group, Darcor Electrical Engineers, CST, Consulting Structural Engineers who provided similar services during the drafting of the construction drawings: field surveillance, electrical engineering services, structural engineering services, drafting services and specialty inspections.

Town Hall staff will take the majority of the responsibility for managing the project and performing any inspections within our realm. However, in order to achieve this redevelopment goal, a professional firm must be hired to assist the Town with field surveillance, electrical engineering services, structural engineering services, drafting services and specialty inspections, as the Town does not have structural or electrical engineers on staff. These requested services are similar to those that have been used to help construct Parks and Recreation infrastructure projects, the Community center and the new Town Hall.

Staff is not asking for additional funding for these services, but is simply asking Council to approve the contract. Staff has negotiated a time and materials contract with WLB Group, Inc. and therefore controlling the amount of on-site time required. The contract for \$45,000 is a not-to-exceed contract.

List All Attachments as Follows: Contract

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE
TOWN OF FOUNTAIN HILLS
AND
THE WLB GROUP, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of May 18, 2006, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and The WLB Group, Inc., an Arizona corporation (the "Consultant").

RECITALS

A. The Town issued a Request for Qualifications (the "RFQ") seeking statements of qualifications from consultants for professional design and consulting services (the "Services").

B. The Consultant responded to the RFQ and the City desires to enter into an Agreement with the Consultant for Construction Phase Services – Avenue of the Fountains Phases 1A and 1B.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the following mutual covenants and conditions, the Town and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until September 30, 2006.

2. Scope of Work. Consultant shall provide the Services as set forth in the Consultant Proposal, attached hereto as Exhibit A and incorporated herein by reference.

3. Inspection; Acceptance. All work shall be subject to inspection, surveillance, testing and acceptance by the Town at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the Town.

4. Payments. The Town shall pay the Consultant upon completion of the Services to be performed hereunder. Consultant shall submit invoices to the Town that shall document and itemize all work completed. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment. The Town shall review and approve all invoice statements. Once approved, invoices shall be paid within 30 days of said approval. The total compensation to be paid the Consultant for the services provided to be performed hereunder shall not exceed the bid amount of \$45,000.00 as set forth in the attached Exhibit A.

5. Licenses. Consultant shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Consultant.

6. Indemnification. To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless the Town, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Consultant, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Consultant's duty to defend, hold harmless and indemnify the Town, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of property, including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement of any employee of the Consultant or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Consultant may be legally liable. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

7. Insurance.

7.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Consultant. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms

of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

e. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, including Workers' Compensation insurance, waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Consultant shall be solely responsible for any such deductible or self-insured retention amount. The Town, at its option, may require Consultant to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute a written agreement with Subcontractor containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Consultant. Consultant shall be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant shall furnish the Town with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the Town shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such certificates shall identify the contract work number and be sent to the Director of Public Works or his designee. If any of the above-cited

policies expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally certificates of insurance submitted without referencing a contract number will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- (b) Auto Liability - Under ISO Form CA 20 48 or equivalent.
- (c) Excess Liability - Follow Form to underlying insurance.

(2) Consultant's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

7.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Consultants, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with

respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant’s owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

c. Workers’ Compensation Insurance. Consultant shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

7.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days prior written notice to the Town.

8. Termination; Cancellation.

8.1 For Town’s Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause by the Town 30 days after receipt by Consultant of written notice by the Town. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

8.2 For Cause. This Agreement may be terminated by either party upon 30 days’ written notice to the other party should the other party fail to substantially perform in accordance with this Agreement’s terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

8.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days’ written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Consultant for the undisputed portion of its fee due as of the termination date.

8.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to its subject matter.

8.5 Gratuities. The Town may, by written notice to the Consultant, cancel this Agreement if it is found by the Town that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is cancelled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

9. Miscellaneous.

9.1 Independent Consultant. The Consultant acknowledges that all services provided under this Agreement are being provided as an independent Consultant, not as an employee or agent of the Town. Both parties agree that this Agreement is nonexclusive and that Consultant is not prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere.

9.2 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible remains in compliance with of all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (i) existing and future Town and County ordinances and regulations, (ii) state and federal laws and (iii) Occupational Safety and Health Administration (“OSHA”) standards.

9.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Consultant.

9.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

9.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

9.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any Town payments issued hereunder and that the Consultant should make arrangements to directly pay such expenses, if any.

9.7 Interpretation; Parol Evidence. This Agreement represents the entire Agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral contracts have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract.

9.8 Assignment. No right or interest in this Agreement shall be assigned by Consultant without prior, written permission of the Town and no delegation of any duty of Consultant shall be made without prior, written permission of the Town.

9.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.

9.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

9.11 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

10. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to the Town: Town of Fountain Hills
P.O. Box 17958
Fountain Hills, Arizona 85269-7958
Facsimile: 480-837-1404
Attn: Thomas L. Ward

With copy to: GUST ROSENFELD P.L.C.
201 E. Washington, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: 602-340-1538
Attn: Andrew J. McGuire, Esq.

If to Consultant: The WLB Group
333 East Osborn Street, Suite 380
Phoenix, Arizona 85012
Facsimile: 602-279-7810
Attn: Ken Caldwell

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

IN WITNESS WHEREOF, the Town and the Consultant have caused this Agreement to be duly executed as of the day, month and year first above written.

"Town"

TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation

Tim Pickering, Town Manager

ATTEST:

Bev Bender, Town Clerk

"Consultant"

THE WLB GROUP, INC., an Arizona
corporation

By: 

Name: James R Burke

Title: Director of Operations, Plus

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on May 11th, 2006,
by James R. Burke as Director of Operations of THE WLB GROUP,
INC., an Arizona corporation, behalf of such corporation.



My Commission Expires:

08/15/08

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2006,
by Timothy Pickering, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation, on behalf of the Town of Fountain Hills.

Notary Public in and for the State of Arizona

My Commission Expires:

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
THE WLB GROUP, INC.

[Consultant Proposal]

See following pages.



Engineering • Planning
Surveying • Urban Design
Landscape Architecture

April 25, 2006

Megan Griego, Economic Development Specialist
Town of Fountain Hills
16705 E. Avenue of the Fountains
Fountain Hills, AZ 85268
cc: Kate Zanon

**CONSTRUCTION-PHASE SERVICES,
AOTF Phases 1A & 1B.**

Megan,

Assumptions:

1. The construction period is scheduled for 120 calendar days. The Town may extend the construction period with corresponding adjustments in the time-and-materials fee, if warranted.
2. Services by DARcor and CTS (electrical and structural) are based on fee proposals by them, and they will act as sub-contractors to WLB Group; these numbers are included in our fee amount and we will bill their services per the attached fee schedule. They will also be "on-call" per item 3 below.
3. The Town of Fountain Hills will serve as Construction Administrator, and WLB Group and its sub-consultants will provide services on an on-call basis billed on a time-and-materials basis, so the final cost may vary depending on the amount of time and expenses actually incurred. The stated amount will not be exceeded without prior authorization by the Town of Fountain Hills.

Stipulated Fees, billed T&M:

<u>Phase 1A and 1B Services</u>	<u>\$45,000</u>
---------------------------------	-----------------

Estimated Fee Distribution:

WLB Group Services:	\$29,360
DARcor Services:	11,500*
CTS Services	4,140*

* Per WLB billing rates, figure shown includes 15% billing mark-up

WLB's billing statements will always indicate the amount billed that period by staff-category, the amount billed previously, and amount remaining,

WLB Group Inc. will provide assistance to the Town of Fountain Hills, as requested by (a) an advance schedule provided by the Town, (b) contact by phone, fax, e-mail or (c) personal request, during the construction phase of the work including:

1. Advise and consult on interpretations of drawings and specifications in response to construction RFI.
2. Make requested visits to the project site to review progress and general conformance to the plans and specifications.
3. Review and process shop drawings, samples and test panels, as requested.
4. Prepare any supplemental drawings or memoranda needed to clarify the contract documents.
5. Advise and consult with the Town, if requested.
6. Advise on written Change Orders, if requested, to be approved and issued by the Town.
7. Endeavor to guard the Town against defects and deficiencies in the work of the Contractor, based on solely on requested site visits, review of submittals or other requested actions.
8. Review and comment on construction test results if requested. (Construction testing shall be performed by and paid for by the Contractor as part of the construction cost.)
9. If requested, recommend rejection or modification of work that does not conform to the Contract Documents.
10. If requested, assist the Town in the preparation of a punch list of items to be completed by the Contractor prior to acceptance of the work.
11. If requested, assist the Town in obtaining As Built drawings for the acceptance of the project.

The WLB Group Inc. (here to mean WLB Group and its sub-consultants) will provide services based on the following descriptions of services:

1. Neither WLB nor its sub-consultants will provide periodic field surveillance during construction (to review contractor compliance with the approved plans and specifications) unless so requested by the Town.
2. In the event a change in scope of work is initiated by the Contractor or Town due to field issues or unforeseen conditions such that it warrants additional work by the Contractor that is not covered by the existing requirements of the contract, if so requested WLB will assist the Client with the preparation of a change order to adjust the contract amount. If so requested by the Town, WLB will coordinate with the Contractor and Town for the Contractor's preparation of the as-built drawings. (The Contractor has full responsibility for recording plan changes and producing as-built plans, per the specifications).
3. In the absence of on-going observation of construction, WLB's only basis for certification that the work was accomplished in substantial conformance with the approved plans and specifications will be (a) WLB's Town-requested observation of the work and/or review of test results; (b) Town-requested review of the Contractor's as-built plans; and (c) Town-requested review of Town records of construction observations, testing records and inspections. WLB will supply certifications based on inspections by WLB or its sub-contractors only if the Town has requested sufficient observations and inspections to allow such certification:

- a. Grading
- b. Connection to potable water for the irrigation systems.
- c. Electrical work (via DARcor) and steel structures (via CTS).
- d. Sidewalks, Pedestrian Pavements, Vehicular Driveway Reconstruction, Curb and Gutter, and Ramps
- e. Sub-grade Under Pavement, Curb and Gutter, and Sidewalk Sections
- f. Base Course Material
- g. Asphalt Concrete
- h. If requested, final As-built Certification based on Contractor's as-built plans
- i. If requested, WLB will assist in the verification of substantial completion and provide a final punch list of all outstanding items or issues pending resolution. This will include attendance at the pre-final and final inspection with the Town.

These services include special inspections and certifications by DARcor Electrical Engineering and CTS Structural Engineering as described in their separate fee proposals, only if so requested by the Town.

If this is acceptable, please execute the signature below and return the original to WLB Group.

Best regards,

Kenneth Caldwell RLA, ASLA
Senior Project Manager

Accepted this ____ day of _____, 2006, by:

Town contracting officer (name): _____

Signature: _____ Date: _____

Accepted for The WLB Group:
James R. Burke PE

Signature: _____ Date: _____

THE WLB GROUP, INC.
FEE SCHEDULE FOR PROFESSIONAL SERVICES
PHOENIX

TYPICAL HOURLY RATES, 2006

<u>Personnel</u>	<u>Hourly Rate</u>
Principal: Engineer/Landscape Arch./Planner/Surveyor	\$130.00
Public Presentation or Expert Testimony	\$200.00
Senior Project Manager	\$115.00
Project Manager/Professional Surveyor	\$110.00
Senior: Project Engineer/Landscape Arch./Planner	\$ 95.00
Senior: Surveyor/Inspector/Designer	\$ 85.00
Project: Engineer/Landscape Arch./Planner	\$ 85.00
Staff Design Engineer/Landscape Arch./Inspector/Planner	\$ 75.00
Sr. Cadd Operator	\$ 70.00
Senior Technician	\$ 70.00
Land Surveyor	\$ 70.00
Design Technician	\$ 65.00
Technician/Cadd Operator	\$ 60.00
Draftsperson/Assistant Technician	\$ 55.00
Clerical	\$ 45.00
Three Man Survey Crew	\$140.00
Two Man Survey Crew	\$115.00
Additional Hourly GPS Rate/Crew	\$ 30.00

Reimbursable expenses including subconsultants: cost x 1.15

DARcor Electrical Engineers
TYPICAL HOURLY RATES, 2006

<u>Personnel</u>	<u>Hourly Rate</u>
Principal/Project Manager	\$140.00
Project Engineer	\$120.00
Senior Designer/Technician	\$90.00
Junior Designer/Technician	\$75.00
AutoCAD Draftsperson	\$65.00
Clerical/Administrative	\$60.00
Reimbursable expenses: cost x 1.15	

Caruso Turley Scott Structural Engineers
TYPICAL HOURLY RATES, 2006

<u>Personnel</u>	<u>Hourly Rate</u>
Partner/Principal	\$145.00
Associate	\$125.00
Project Manager	\$105.00
Structural Engineer	\$95.00
Structural Designer	\$80.00
Senior Field Representative	\$75.00
Field Representative	\$65.00
Senior Structural Drafter	\$75.00
Structural Drafter	\$70.00
Clerical	\$45.00
Reimbursable expenses: cost x 1.15	

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: 5/18/06

Submitting Department: Admin

Contact Person: Julie Ghetti

Consent: ☒

Regular: ☐

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input checked="" type="checkbox"/> Finance |

Regular Agenda Wording: Consideration of Resolution 2006-31 declaring as a public record that certain document filed with the Town Clerk and entitled "The 2006 Amendments to the Tax Code of the Town of Fountain Hills."

Staff Recommendation: Approve

Fiscal Impact: No \$

Purpose of Item and Background Information: Proposed changes to the Model City Tax Code (MCTC) are recommended by the Municipal Tax Code Commission (MTCC) and forwarded to the Town by the League of Arizona Cities and Towns. The MTCC is composed of nine city/town elected officials appointed by the governor and legislative leadership who meet annually to review any proposed changes to the tax code and approve changes. The 2006 Tax Code Amendments are presented for Town Council approval.

List All Attachments as Follows: Resolution 2006-31, Summary of Changes to MCTC and 2006 Amendments to the Tax Code of the Town of Fountain Hills.

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

TOWN OF FOUNTAIN HILLS
FINANCE DEPARTMENT
INTER OFFICE MEMO

TO: Honorable Mayor and Town Council	DT: May 17, 2006
THROUGH: Timothy Pickering, Town Manager	
FR: Julie A. Ghetti, MPA, CPA	RE: Amendments to the Fountain Hills Tax Code

All cities and towns in Arizona that impose a local sales tax have adopted the Arizona model city tax code (MCTC). The MCTC was originally drafted in response to a recommendation adopted by a legislatively created municipal sales tax study commission. The MCTC provides uniformity for businesses, particularly for multi-jurisdictional taxpayers who pay not only to the state but also to two or more cities and towns throughout the state.

The Municipal Tax Code Commission was created by the State Legislature to act as a forum for discussion of all changes to the MCTC and is composed of nine city/town elected officials appointed by the governor and legislative leadership. The Unified Audit Committee is composed of city sales tax officials and representatives of the Department of Revenue. All proposed changes to the code are reviewed by the Unified Audit Committee and approved by the Municipal Tax Code Commission. Any changes approved by the Commission must also be adopted by each city/town council.

The League of Arizona Cities and Towns maintains a master version of the MCTC and communicates with cities and towns when changes need to be adopted. On Friday, May 12, 2006 the League forwarded the proposed changes to the Fountain Hills tax code requesting that the changes be approved with an effective date of July 1, 2006. The changes become effective no less than 30 days after council approval, thus the May 18th council meeting is the last chance to approve them before the beginning of the next fiscal year.

The amendments proposed with Ordinance 2006-17 are a combination of changes to state statute as well as an agreement made with state housing associations concerning federal low-income housing programs. All of the amendments are designed to reflect recent changes to make compliance with the tax code easier for businesses. The changes affect low-income housing rentals and excess tax collection refunds (none in Fountain Hills).

Please feel free to see me if you have any questions.

2006 Model City Tax Code Changes

1. Refunds of Excess Tax Collected. Makes numerous changes to the process of refunding excess sales tax collected by a city/town. Attached is a more detailed explanation of these changes.
2. Low-income Housing. The new language to be placed in the Model City Tax Code makes income from housing units rented to low-income tenants exempt from sales tax (including Public Housing tenants) when:
 - the housing is restricted to tenants based on a maximum tenant income, and
 - a maximum rent that can be paid by the tenant has been established under federal law or regulations, and
 - the federal law or regulations do not provide for collection of rental tax from the tenant over and above the maximum rent, and
 - the amount actually collected from the tenant is at the maximum rent level.

All rental income from the units meeting these four qualifications is exempt, including any related subsidy or income tax credit. Gross income from other units, even at the same complex or project, is taxable.

**SUMMARY OF CHANGES TO MODEL CITY TAX CODE (MCTC)
DUE TO LAWS 2005, CHAPTER 116 (HB 2055)**

- **Added definition of “excess tax” to Sec. 100, excluding tax collected on exempt income.** This term is used in Reg. 250.1 and in the revised Sec. 560. The standard in the MCTC is that terms used in more than one section are defined in Sec. 100.
- **Changed interest rate in Sec. 540 to match the floating interest rate in A.R.S. 42-1123(A) for interest charged after September 2005, compounding only the interest charged after September 2005.**
- **Deleted the requirement in subsection 542(d) to remit any tax collected from customers as a condition of a refund due to a change in interpretation or application of the code.**
- **Sec. 560 restructured for each subsection to deal with separate subjects in the approximate order of occurrence.**
- **Removed former subsection (c) requiring taxpayers to remit any tax collected from customers as a condition of the refund.**
- **New subsection (c) lists the minimum requirements for a claim (formerly in subsection (b)(4)).**
- **New subsection (d) establishes the statute of limitations for a claim meeting the minimum requirements (formerly in subsection (b)(4)).**
- **New subsection (e) establishes requirements and time limitations for the Tax Collector and taxpayer related to establishing that a claim meets the requirements of subsection (c), requests for documentation needed to support the claim (reasonably related and required by the Code, written requests, extensions, appeals related to requests), when a taxpayer may treat the claim as denied and establishes the burden of proof to show receipt of written communications.**
- **New subsection (f) sets the interest rate on credits or refunds to taxpayers to match the interest rate charged in 540(a) and sets the date from which to calculate interest as the date the valid claim is filed. The interest is to be paid on refunded tax as done by the state.**
- **New subsection (g) requires a written determination from the Tax Collector on the claim, which must include the taxpayer’s rights of appeal.**
- **New subsection (h) establishes when determination becomes final, unless appealed (formerly in subsection (e)), and provides for the award of fees and other costs to a taxpayer if they prevail.**
- **New subsection (i) clarifies that all claims received by a city prior to October 1, 2005 are subject to provisions of Section 560 as they existed prior to October 1, 2005. Additionally, the claim, interest or appeal provision changes to Section 560 cannot be cited or considered for claims received by a city prior to October 1, 2005. All claims received by a city after September 2005 are subject to the new provisions of Section 560.**
- **Effective date provision that must be a part of each city’s adopting ordinance makes the ordinance effective October 1, 2005.**

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS".

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA:

THAT certain document entitled "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS", three copies of which are on file in the office of the city clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

PASSED AND ADOPTED BY THE Mayor and Council of the Town of Fountain Hills, Arizona, this _____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA:

Section 1: That certain document known as "The 2006 Amendments to the Tax Code of the Town of Fountain Hills," three copies of which are on file in the office of the city clerk of the Town of Fountain Hills, Arizona, which document was made a public record by Resolution No. _____ of the Town of Fountain Hills, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

Section 2: The provisions of this ordinance and the public record adopted herein are effective from and after July 1, 2006.

Section 3: Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 4: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, this _____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS

Section 1. Section 8A-445 of the Tax Code of the Town of Fountain Hills is amended to read:

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to one and six-tenths percent (1.6%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:
 - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 8A-444 of this code.
- (k) (Reserved)
- (l) (Reserved)

- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 8A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt
- (r) INCOME RECEIVED FROM THE RENTAL OF ANY "LOW-INCOME UNIT" AS ESTABLISHED UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, INCLUDING THE LOW-INCOME HOUSING CREDIT PROVIDED BY IRC SECTION 42, TO THE EXTENT THAT THE COLLECTION OF TAX ON RENTAL INCOME CAUSES THE "GROSS RENT" DEFINED BY IRC SECTION 42 TO EXCEED THE INCOME LIMITATION FOR THE LOW-INCOME UNIT IS EXEMPT. THIS EXEMPTION ALSO APPLIES TO INCOME RECEIVED FROM THE RENTAL OF INDIVIDUAL RENTAL UNITS SUBJECT TO STATUTORY OR REGULATORY "LOW-INCOME UNIT" RENT RESTRICTIONS SIMILAR TO IRC SECTION 42 TO THE EXTENT THAT THE COLLECTION OF TAX FROM THE TENANT CAUSES THE RENTAL RECEIPTS TO EXCEED A RENT RESTRICTION FOR THE LOWINCOME UNIT. THIS SUBSECTION ALSO APPLIES TO RENT RECEIVED BY A PERSON OTHER THAN THE OWNER OR LESSOR OF THE LOW-INCOME UNIT, INCLUDING A BROKER. THIS SUBSECTION DOES NOT APPLY UNLESS A TAXPAYER MAINTAINS THE DOCUMENTATION TO SUPPORT THE QUALIFICATION OF A UNIT AS A LOW-INCOME UNIT, THE "GROSS RENT" LIMITATION FOR THE UNIT AND THE RENT RECEIVED FROM THAT UNIT.

Section 2. Section 8A-542 of the Tax Code of the Town of Fountain Hills is amended to read:

Section 8A-542. Prospective application of new law or interpretation or application of law.

- (a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.
- (b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
 - (1) The change in interpretation or application applies prospectively only unless it is favorable to taxpayers.
 - (2) The Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- (c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.

- (d) ~~Tax liabilities, penalties and interest paid before a new interpretation or application of a provision of this Chapter shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to the Tax Collector that all such amounts will be refunded to the person who paid an added charge to cover the tax.~~ (RESERVED)

Section 3. Section 8A-560 of the Tax Code of the Town of Fountain Hills is amended to read:

Sec. 8A-560. Erroneous payment of tax; credits and refunds; limitations.

- (a) The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be canceled from the accounts of the City if no timely filed request for credit or refund is made by the ~~taxpayer~~ CLAIMANT claiming same within one (1) year following the date of determination and notice by the Tax Collector of the excess payment. FOR PURPOSES OF THIS SECTION, "CLAIMANT" MEANS A TAXPAYER THAT HAS PAID A TAX IMPOSED UNDER THIS ARTICLE AND HAS SUBMITTED A CREDIT OR REFUND CLAIM UNDER THIS SECTION. EXCEPT WHERE THE TAXPAYER HAS GRANTED A CUSTOMER A POWER OF ATTORNEY TO PURSUE A CREDIT OR REFUND CLAIM ON THE TAXPAYER'S BEHALF, CLAIMANT DOES NOT INCLUDE ANY CUSTOMER OF SUCH TAXPAYER, WHETHER OR NOT THE CLAIMANT COLLECTED THE TAX FROM CUSTOMERS BY SEPARATELY STATED ITEMIZATION.
- (b) No credit shall be allowed or refund paid except under one of the following conditions:
- (1) as provided in Section 8A-565.
 - (2) upon examination of filed returns for any period not excluded by Section 8A-550, and not to exceed the tax, penalty, or interest actually paid with such returns.
 - (3) upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 8A-550. In the case of an examination performed at the taxpayer's request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest actually paid within the limitation period provided in Section 8A-550, such period to be calculated from the date of receipt of the taxpayer's request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits.
 - (4) upon the ~~taxpayer's~~ CLAIMANT'S submission of a written claim for CREDIT OR refund of any ~~excess taxes, penalties, or interest paid to the City by the taxpayer CLAIMANT. When a written claim for refund is submitted, credit shall be allowed or refund paid only for those excess taxes, penalties, or interest paid within the limitation period provided in Section 8A-550, such period to be calculated from the date the Tax Collector receives the taxpayer's written refund claim. A refund claim submitted by a taxpayer pursuant to this subsection must identify the specific grounds upon which the claim is based, the dollar amount of the refund requested, the specific tax periods involved, and the name, address and tax identification number of the claimant.~~
- (c) ~~No credit will be allowed or refund paid where it appears that the taxpayer has collected, by separately stated itemization, the amount of the tax, except that a credit or refund will be allowed in such case if the taxpayer can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this Section will be remitted to those customers within sixty (60) days of receipt of the refund.~~
- (c) A CREDIT OR REFUND CLAIM SUBMITTED BY A CLAIMANT PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION MUST:
- (1) IDENTIFY THE NAME, ADDRESS AND CITY TAX IDENTIFICATION NUMBER OF THE TAXPAYER; AND
 - (2) IDENTIFY THE DOLLAR AMOUNT OF THE CREDIT OR REFUND REQUESTED; AND
 - (3) IDENTIFY THE SPECIFIC TAX PERIOD INVOLVED; AND
 - (4) IDENTIFY THE SPECIFIC GROUNDS UPON WHICH THE CLAIM IS BASED.

- (d) ~~Interest shall be allowed at the rate of interest earnings on the Town of Fountain Hills' Treasurer's pool for the period of time the cash was held. Interest shall be calculated from the time of the refund claim made to the City by the taxpayer.~~
- (d) WHEN A WRITTEN CLAIM FOR CREDIT OR REFUND IS SUBMITTED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION, NO CREDIT SHALL BE ALLOWED OR REFUND PAID EXCEPT FOR THOSE TAXES , PENALTIES, OR INTEREST PAID IN EXCESS OF THE AMOUNT DUE WITHIN THE LIMITATION PERIOD PROVIDED IN SECTION 8A-550. THE CREDIT OR REFUND LIMITATION PERIOD SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM MEETING THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.
- (e) ~~The determination of the Tax Collector that no refund or credit is to be paid or allowed pursuant to this Section may be appealed by the taxpayer under the provisions of Section 8A-570.~~
- (e) THE FOLLOWING ADDITIONAL REQUIREMENTS APPLY TO THE TAX COLLECTOR AND THE CLAIMANT FOR CLAIMS FOR CREDIT OR REFUND SUBMITTED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION:
 - (1) THE TAX COLLECTOR SHALL NOTIFY THE CLAIMANT THAT THE CLAIM FOR CREDIT OR REFUND HAS BEEN RECEIVED AND SHALL INDICATE WHETHER THE CLAIM MEETS THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION. IF THE CLAIM DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION, THE TAX COLLECTOR SHALL IDENTIFY THE DEFICIENCY IN WRITING. ANY CLAIM THAT DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION SHALL NOT SECURE THE LIMITATION PERIOD PURSUANT TO SECTION 8A-550.
 - (2) THE TAX COLLECTOR MAY REQUEST, IN WRITING, ADDITIONAL INFORMATION OR DOCUMENTATION FROM THE CLAIMANT TO SUPPORT THE REQUESTED CREDIT OR REFUND. SUCH INFORMATION OR DOCUMENTATION MUST BE REASONABLY RELATED TO THE CLAIM AND REQUIRED TO BE MAINTAINED UNDER THIS CHAPTER IN THE NORMAL COURSE OF BUSINESS.
 - (A) THE CLAIMANT MAY REQUEST IN WRITING ONE OR MORE EXTENSIONS TO SUPPLY THE REQUESTED INFORMATION OR DOCUMENTATION. THE TAX COLLECTOR MAY REJECT AN EXTENSION REQUEST ONLY BY DENYING THE CLAIM IN WHOLE OR IN PART, SUBJECT TO APPEAL BY THE CLAIMANT PURSUANT TO SECTION 8A-570.
 - (B) A CLAIMANT AGGRIEVED BY A REQUEST FOR INFORMATION OR DOCUMENTATION UNDER THIS SUBSECTION MAY FILE AN APPEAL IN THE MANNER PROVIDED FOR IN SECTION 8A-570 REGARDING THE SCOPE OF THE REQUEST FOR INFORMATION OR DOCUMENTATION. SUCH PETITION MUST BE FILED NO LATER THAN THE LAST DAY BY WHICH REQUESTED INFORMATION OR DOCUMENTATION MUST BE PROVIDED TO THE TAX COLLECTOR, INCLUDING ANY EXTENSIONS . THE DECISION OF THE HEARING OFFICER REGARDING A REQUEST FOR INFORMATION OR DOCUMENTATION MAY NOT BE APPEALED BY EITHER PARTY UNTIL THE CLAIM HAS BEEN APPROVED OR DENIED , IN WHOLE OR IN PART, UNDER SUBSECTION (H) OF THIS SECTION OR THROUGH SUBSUBSECTIONS (E)(3) OR (E)(4) OF THIS SECTION. A CLAIMANT SHALL NOT BE BARRED FROM RAISING THE ISSUE OF THE REASONABLENESS OF THE TAX COLLECTOR'S INFORMATION OR DOCUMENTATION REQUEST IN AN APPEAL FILED UNDER SUBSECTION (H) OF THIS SECTION OR THROUGH SUBSUBSECTIONS (E)(3) OR (E)(4) OF THIS SECTION THROUGH A LACK OF FILING A PETITION UNDER THIS SUBSUBSECTION.
 - (3) IF THE TAX COLLECTOR FAILS TO REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION PURSUANT TO THIS SECTION AND FAILS TO ISSUE A DETERMINATION ON ANY CLAIM FOR CREDIT OR REFUND WITHIN SIX (6) MONTHS AFTER THE CLAIM IS FILED, THE CLAIMANT MAY CONSIDER THE CLAIM DENIED AND MAY FILE AN APPEAL PURSUANT TO SECTION 8A-570.
 - (4) IF THE TAX COLLECTOR FAILS TO ISSUE A DETERMINATION WITHIN SIX (6) MONTHS OF RECEIVING ALL REQUESTED ADDITIONAL INFORMATION OR DOCUMENTATION, THE CLAIMANT MAY CONSIDER THE CLAIM FOR CREDIT OR REFUND DENIED AND MAY FILE AN APPEAL PURSUANT TO SECTION 8A-570.
 - (5) THE BURDEN OF PROOF TO SHOW THAT A NOTICE, REQUEST, DETERMINATION OR OTHER COMMUNICATION WAS RECEIVED BY THE CLAIMANT IN THIS SECTION IS ON THE TAX COLLECTOR, AND WILL BE SATISFIED BY RECEIPT OF NOTICE. THE BURDEN OF PROOF TO SHOW THAT A CLAIM OR ADDITIONAL INFORMATION OR DOCUMENTATION WAS RECEIVED BY THE TAX COLLECTOR IS ON THE CLAIMANT AND WILL BE SATISFIED BY RECEIPT OF NOTICE.

- (f) ~~Any refund paid under the provisions of this Section shall be paid from the privilege tax revenue accounts.~~
- (f) INTEREST SHALL BE ALLOWED ON THE OVERPAYMENT OF TAX FOR ANY CREDIT OR REFUND AUTHORIZED PURSUANT TO SUBSECTIONS (B)(3) OR (B)(4) OF THIS SECTION. SUCH INTEREST SHALL BE ALLOWED ON THE OVERPAYMENT OF TAX AT THE RATE AND IN THE MANNER SET FORTH IN SECTION 8A-540(A), EXCEPT THAT INTEREST SHALL BE ALLOWED PRIOR TO OCTOBER 1, 2005 AT THE RATE OF INTEREST EARNINGS ON THE TOWN OF FOUNTAIN HILLS TREASURER'S POOL FOR THE PERIOD OF TIME THE CASH WAS HELD THROUGH SEPTEMBER 30, 2005. INTEREST SHALL BE ALLOWED AS FOLLOWS:
- (1) FOR CREDITS OR REFUNDS AUTHORIZED PURSUANT TO SUBSECTION (B)(3) OF THIS SECTION, INTEREST SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM FOLLOWING THE DATE OF NOTICE TO THE CLAIMANT AUTHORIZING THE CREDIT OR REFUND.
 - (2) FOR CREDITS OR REFUNDS AUTHORIZED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION, INTEREST SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM MEETING THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.
- (g) THE TAX COLLECTOR SHALL GIVE THE CLAIMANT A WRITTEN NOTICE OF DETERMINATION FOR A CLAIM MADE UNDER SUBSECTION (B) OF THIS SECTION. IF THE DETERMINATION IS A DENIAL OF A CLAIM, IN WHOLE OR IN PART, THE DETERMINATION MUST STATE THAT THE CLAIM FOR CREDIT OR REFUND HAS BEEN DENIED IN WHOLE OR IN PART, WITH THE REASON FOR DENIAL, AND MUST INCLUDE THE CLAIMANT'S RIGHTS OF APPEAL PURSUANT TO SECTION 8A-570.
- (h) A DETERMINATION BY THE TAX COLLECTOR UNDER THIS SECTION, WHETHER AN APPROVAL OF A CLAIM OR A DENIAL OF A CLAIM, IN WHOLE OR IN PART, SHALL BECOME FINAL FORTY-FIVE (45) DAYS FROM THE DATE OF RECEIPT OF THE NOTICE BY THE CLAIMANT, UNLESS AN APPEAL IS MADE PURSUANT TO SECTION 8A-570. IF THE CLAIMANT IS THE PREVAILING PARTY IN AN APPEAL OF A DETERMINATION UNDER THIS SECTION, SECTION 8A-578 SHALL APPLY, EXCEPT THAT REASONABLE FEES AND OTHER COSTS MAY BE AWARDED EITHER BY THE HEARING OFFICER OR COURT AND ARE NOT SUBJECT TO THE MONETARY LIMITATIONS OF SUBSECTION 8A-578(E) IF THE TAX COLLECTOR'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED OR WAS BROUGHT FOR THE PURPOSE OF HARASSING THE CLAIMANT, FRUSTRATING THE CREDIT OR REFUND PROCESS OR DELAYING THE CREDIT OR REFUND. FOR THE PURPOSES OF THIS SECTION, "REASONABLE FEES AND OTHER COSTS" MEANS FEES AND OTHER COSTS THAT ARE BASED ON PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE FURNISHED SERVICES, NOT TO EXCEED THE AMOUNTS ACTUALLY PAID FOR EXPERT WITNESSES, THE COST OF ANY STUDY, ANALYSIS, REPORT, TEST, PROJECT OR COMPUTER PROGRAM THAT IS FOUND TO BE NECESSARY TO PREPARE THE CLAIMANT'S CASE AND NECESSARY FEES FOR ATTORNEYS OR OTHER REPRESENTATIVES.
- (i) THE AMENDMENTS TO THIS SECTION AS ENACTED IN ORDINANCE # _____ SHALL BE EFFECTIVE AS FOLLOWS:
- (1) FOR ANY CLAIM FOR REFUND OR CREDIT RECEIVED BY THE TAX COLLECTOR BEFORE OCTOBER 1, 2005,
 - (A) THE PROVISIONS OF THIS SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF ORDINANCE # _____ SHALL APPLY, EXCEPT THAT INTEREST SHALL BE ALLOWED FROM AND AFTER OCTOBER 1, 2005 AS PROVIDED IN SUBSECTION (F) OF THIS SECTION AS ENACTED BY ORDINANCE # _____.
 - (B) EXCEPT AS NOTED IN SUBSECTION (1)(A) ABOVE, THE AMENDMENTS TO THIS SECTION AS ENACTED IN ORDINANCE # _____ SHALL NOT BE CITED OR CONSIDERED IN THE CONSTRUCTION OR THE INTERPRETATION OF THE CITY TAX REFUND OR CREDIT PROVISIONS, INTEREST PROVISIONS, OR APPEAL PROVISIONS IN EFFECT PRIOR TO OCTOBER 1, 2005.
 - (2) THE PROVISIONS OF THIS SECTION ENACTED BY ORDINANCE # _____ SHALL APPLY TO ALL CLAIMS FOR REFUND OR CREDIT, FOR ANY PERIODS AS DETERMINED BY SUBSECTIONS (D) OR (E) OF THIS SECTION, RECEIVED BY THE TAX COLLECTOR FROM AND AFTER OCTOBER 1, 2005, EXCEPT FOR CLAIMS THAT, IN WHOLE OR IN PART, HAD BEEN RECEIVED BY THE COLLECTOR PRIOR TO OCTOBER 1, 2005.

- (j) ANY REFUND PAID UNDER THE PROVISIONS OF THIS SECTION SHALL BE PAID FROM THE PRIVILEGE TAX REVENUE ACCOUNTS.

Section 4. Regulation 8A-250.1 of the Tax Code of the Town of Fountain Hills is amended to read:

Reg. 8A-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax RATE from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. TAX PAID ON AN ACTIVITY THAT IS NOT SUBJECT TO TAX OR THAT QUALIFIES FOR AN EXEMPTION, DEDUCTION, EXCLUSION OR CREDIT IS NOT EXCESS TAX COLLECTED.

RESOLUTION NO. 2006-31

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE "2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS."

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That certain document entitled the "2006 Amendments to the Tax Code of the Town of Fountain Hills" of which three copies each are on file in the office of the Town Clerk and open for public inspection during normal business hours, is hereby declared to be public record, and said copies are ordered to remain on file with the Town Clerk.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, May 18, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: 5/18/06

Submitting Department: Admin

Contact Person: Julie Ghetti

Consent: ☒

Regular: ☐

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input checked="" type="checkbox"/> Finance |

Regular Agenda Wording: Consideration of Ordinance 06-17 adopting the 2006 Amendments to the Tax Code of the Town of Fountain Hills by reference, establishing an effective date providing for severability and providing penalties for violations.

Staff Recommendation: Approve

Fiscal Impact: No \$

Purpose of Item and Background Information: Proposed changes to the Model City Tax Code (MCTC) are approved by the Municipal Tax Code Commission (MTCC) during their annual tax code review meeting. The amendments proposed with Ordinance 06-17 are a combination of changes to state statute as well as an agreement made with state housing associations concerning federal low-income housing programs. All of the amendments are designed to reflect recent changes to make compliance with the tax code easier for businesses. The changes affect low-income housing rentals and excess tax collection refunds (none in Fountain Hills).

List All Attachments as Follows: Ordinance 06-17, Summary of Changes to MCTC and 2006 Amendments to the Tax Code of the Town of Fountain Hills.

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

2006 Model City Tax Code Changes

1. Refunds of Excess Tax Collected. Makes numerous changes to the process of refunding excess sales tax collected by a city/town. Attached is a more detailed explanation of these changes.
2. Low-income Housing. The new language to be placed in the Model City Tax Code makes income from housing units rented to low-income tenants exempt from sales tax (including Public Housing tenants) when:
 - the housing is restricted to tenants based on a maximum tenant income, and
 - a maximum rent that can be paid by the tenant has been established under federal law or regulations, and
 - the federal law or regulations do not provide for collection of rental tax from the tenant over and above the maximum rent, and
 - the amount actually collected from the tenant is at the maximum rent level.

All rental income from the units meeting these four qualifications is exempt, including any related subsidy or income tax credit. Gross income from other units, even at the same complex or project, is taxable.

**SUMMARY OF CHANGES TO MODEL CITY TAX CODE (MCTC)
DUE TO LAWS 2005, CHAPTER 116 (HB 2055)**

- **Added definition of “excess tax” to Sec. 100, excluding tax collected on exempt income.** This term is used in Reg. 250.1 and in the revised Sec. 560. The standard in the MCTC is that terms used in more than one section are defined in Sec. 100.
- **Changed interest rate in Sec. 540 to match the floating interest rate in A.R.S. 42-1123(A) for interest charged after September 2005, compounding only the interest charged after September 2005.**
- **Deleted the requirement in subsection 542(d) to remit any tax collected from customers as a condition of a refund due to a change in interpretation or application of the code.**
- **Sec. 560 restructured for each subsection to deal with separate subjects in the approximate order of occurrence.**
- **Removed former subsection (c) requiring taxpayers to remit any tax collected from customers as a condition of the refund.**
- **New subsection (c) lists the minimum requirements for a claim (formerly in subsection (b)(4)).**
- **New subsection (d) establishes the statute of limitations for a claim meeting the minimum requirements (formerly in subsection (b)(4)).**
- **New subsection (e) establishes requirements and time limitations for the Tax Collector and taxpayer related to establishing that a claim meets the requirements of subsection (c), requests for documentation needed to support the claim (reasonably related and required by the Code, written requests, extensions, appeals related to requests), when a taxpayer may treat the claim as denied and establishes the burden of proof to show receipt of written communications.**
- **New subsection (f) sets the interest rate on credits or refunds to taxpayers to match the interest rate charged in 540(a) and sets the date from which to calculate interest as the date the valid claim is filed. The interest is to be paid on refunded tax as done by the state.**
- **New subsection (g) requires a written determination from the Tax Collector on the claim, which must include the taxpayer’s rights of appeal.**
- **New subsection (h) establishes when determination becomes final, unless appealed (formerly in subsection (e)), and provides for the award of fees and other costs to a taxpayer if they prevail.**
- **New subsection (i) clarifies that all claims received by a city prior to October 1, 2005 are subject to provisions of Section 560 as they existed prior to October 1, 2005. Additionally, the claim, interest or appeal provision changes to Section 560 cannot be cited or considered for claims received by a city prior to October 1, 2005. All claims received by a city after September 2005 are subject to the new provisions of Section 560.**
- **Effective date provision that must be a part of each city’s adopting ordinance makes the ordinance effective October 1, 2005.**

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS".

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA:

THAT certain document entitled "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS", three copies of which are on file in the office of the city clerk, is hereby declared to be a public record, and said copies are ordered to remain on file with the city clerk.

PASSED AND ADOPTED BY THE Mayor and Council of the Town of Fountain Hills, Arizona, this _____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING "THE 2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA:

Section 1: That certain document known as "The 2006 Amendments to the Tax Code of the Town of Fountain Hills," three copies of which are on file in the office of the city clerk of the Town of Fountain Hills, Arizona, which document was made a public record by Resolution No. _____ of the Town of Fountain Hills, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

Section 2: The provisions of this ordinance and the public record adopted herein are effective from and after July 1, 2006.

Section 3: Any person found guilty of violating any provision of these amendments to the tax code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 4: If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the tax code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, this _____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS

Section 1. Section 8A-445 of the Tax Code of the Town of Fountain Hills is amended to read:

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

- (a) The tax rate shall be at an amount equal to one and six-tenths percent (1.6%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:
 - (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
 - (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
 - (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.
- (b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.
- (c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.
- (e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.
- (f) (Reserved)
- (g) (Reserved)
- (h) (Reserved)
- (i) (Reserved)
- (j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 8A-444 of this code.
- (k) (Reserved)
- (l) (Reserved)

- (m) (Reserved)
- (n) Notwithstanding the provisions of Section 8A-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.
- (o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.
- (p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.
- (q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4 Title 36 Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt
- (r) INCOME RECEIVED FROM THE RENTAL OF ANY "LOW-INCOME UNIT" AS ESTABLISHED UNDER SECTION 42 OF THE INTERNAL REVENUE CODE, INCLUDING THE LOW-INCOME HOUSING CREDIT PROVIDED BY IRC SECTION 42, TO THE EXTENT THAT THE COLLECTION OF TAX ON RENTAL INCOME CAUSES THE "GROSS RENT" DEFINED BY IRC SECTION 42 TO EXCEED THE INCOME LIMITATION FOR THE LOW-INCOME UNIT IS EXEMPT. THIS EXEMPTION ALSO APPLIES TO INCOME RECEIVED FROM THE RENTAL OF INDIVIDUAL RENTAL UNITS SUBJECT TO STATUTORY OR REGULATORY "LOW-INCOME UNIT" RENT RESTRICTIONS SIMILAR TO IRC SECTION 42 TO THE EXTENT THAT THE COLLECTION OF TAX FROM THE TENANT CAUSES THE RENTAL RECEIPTS TO EXCEED A RENT RESTRICTION FOR THE LOWINCOME UNIT. THIS SUBSECTION ALSO APPLIES TO RENT RECEIVED BY A PERSON OTHER THAN THE OWNER OR LESSOR OF THE LOW-INCOME UNIT, INCLUDING A BROKER. THIS SUBSECTION DOES NOT APPLY UNLESS A TAXPAYER MAINTAINS THE DOCUMENTATION TO SUPPORT THE QUALIFICATION OF A UNIT AS A LOW-INCOME UNIT, THE "GROSS RENT" LIMITATION FOR THE UNIT AND THE RENT RECEIVED FROM THAT UNIT.

Section 2. Section 8A-542 of the Tax Code of the Town of Fountain Hills is amended to read:

Section 8A-542. Prospective application of new law or interpretation or application of law.

- (a) Unless expressly authorized by law, the Tax Collector shall not apply any newly enacted legislation retroactively or in a manner that will penalize a taxpayer for complying with prior law.
- (b) If the Tax Collector adopts a new interpretation or application of any provision of this Chapter or determines that any provision applies to a new or additional category or type of business and the change in interpretation or application is not due to a change in the law:
 - (1) The change in interpretation or application applies prospectively only unless it is favorable to taxpayers.
 - (2) The Tax Collector shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.
- (c) For purposes of subsection (b), "new interpretation or application" includes policies and procedures which differ from established interpretations of this Chapter.

- (d) ~~Tax liabilities, penalties and interest paid before a new interpretation or application of a provision of this Chapter shall not be refunded unless the taxpayer requesting the refund provides evidence satisfactory to the Tax Collector that all such amounts will be refunded to the person who paid an added charge to cover the tax.~~ (RESERVED)

Section 3. Section 8A-560 of the Tax Code of the Town of Fountain Hills is amended to read:

Sec. 8A-560. Erroneous payment of tax; credits and refunds; limitations.

- (a) The Tax Collector may authorize either credits or payments of refunds for any taxes, penalties or interest paid in excess of the amount actually due. Any credit authorized by the Tax Collector shall be canceled from the accounts of the City if no timely filed request for credit or refund is made by the ~~taxpayer~~ CLAIMANT claiming same within one (1) year following the date of determination and notice by the Tax Collector of the excess payment. FOR PURPOSES OF THIS SECTION, "CLAIMANT" MEANS A TAXPAYER THAT HAS PAID A TAX IMPOSED UNDER THIS ARTICLE AND HAS SUBMITTED A CREDIT OR REFUND CLAIM UNDER THIS SECTION. EXCEPT WHERE THE TAXPAYER HAS GRANTED A CUSTOMER A POWER OF ATTORNEY TO PURSUE A CREDIT OR REFUND CLAIM ON THE TAXPAYER'S BEHALF, CLAIMANT DOES NOT INCLUDE ANY CUSTOMER OF SUCH TAXPAYER, WHETHER OR NOT THE CLAIMANT COLLECTED THE TAX FROM CUSTOMERS BY SEPARATELY STATED ITEMIZATION.
- (b) No credit shall be allowed or refund paid except under one of the following conditions:
- (1) as provided in Section 8A-565.
 - (2) upon examination of filed returns for any period not excluded by Section 8A-550, and not to exceed the tax, penalty, or interest actually paid with such returns.
 - (3) upon audit or other examination of the books and records of the taxpayer, but only for periods as provided in Section 8A-550. In the case of an examination performed at the taxpayer's request, credit shall be allowed or refund paid only for any excess taxes, penalties, or interest actually paid within the limitation period provided in Section 8A-550, such period to be calculated from the date of receipt of the taxpayer's request by the Tax Collector. Requests by taxpayers for audits to authorize credits shall be honored unless, in the opinion of the Tax Collector, the taxpayer has made excessive requests for audits.
 - (4) upon the ~~taxpayer's~~ CLAIMANT'S submission of a written claim for CREDIT OR refund of any ~~excess taxes, penalties, or interest paid to the City by the taxpayer CLAIMANT. When a written claim for refund is submitted, credit shall be allowed or refund paid only for those excess taxes, penalties, or interest paid within the limitation period provided in Section 8A-550, such period to be calculated from the date the Tax Collector receives the taxpayer's written refund claim. A refund claim submitted by a taxpayer pursuant to this subsection must identify the specific grounds upon which the claim is based, the dollar amount of the refund requested, the specific tax periods involved, and the name, address and tax identification number of the claimant.~~
- (c) ~~No credit will be allowed or refund paid where it appears that the taxpayer has collected, by separately stated itemization, the amount of the tax, except that a credit or refund will be allowed in such case if the taxpayer can present documentation satisfactory to the Tax Collector identifying each customer from whom the excess taxes were collected and establishing that any taxes refunded pursuant to this Section will be remitted to those customers within sixty (60) days of receipt of the refund.~~
- (c) A CREDIT OR REFUND CLAIM SUBMITTED BY A CLAIMANT PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION MUST:
- (1) IDENTIFY THE NAME, ADDRESS AND CITY TAX IDENTIFICATION NUMBER OF THE TAXPAYER; AND
 - (2) IDENTIFY THE DOLLAR AMOUNT OF THE CREDIT OR REFUND REQUESTED; AND
 - (3) IDENTIFY THE SPECIFIC TAX PERIOD INVOLVED; AND
 - (4) IDENTIFY THE SPECIFIC GROUNDS UPON WHICH THE CLAIM IS BASED.

- (d) ~~Interest shall be allowed at the rate of interest earnings on the Town of Fountain Hills' Treasurer's pool for the period of time the cash was held. Interest shall be calculated from the time of the refund claim made to the City by the taxpayer.~~
- (d) WHEN A WRITTEN CLAIM FOR CREDIT OR REFUND IS SUBMITTED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION, NO CREDIT SHALL BE ALLOWED OR REFUND PAID EXCEPT FOR THOSE TAXES , PENALTIES, OR INTEREST PAID IN EXCESS OF THE AMOUNT DUE WITHIN THE LIMITATION PERIOD PROVIDED IN SECTION 8A-550. THE CREDIT OR REFUND LIMITATION PERIOD SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM MEETING THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.
- (e) ~~The determination of the Tax Collector that no refund or credit is to be paid or allowed pursuant to this Section may be appealed by the taxpayer under the provisions of Section 8A-570.~~
- (e) THE FOLLOWING ADDITIONAL REQUIREMENTS APPLY TO THE TAX COLLECTOR AND THE CLAIMANT FOR CLAIMS FOR CREDIT OR REFUND SUBMITTED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION:
 - (1) THE TAX COLLECTOR SHALL NOTIFY THE CLAIMANT THAT THE CLAIM FOR CREDIT OR REFUND HAS BEEN RECEIVED AND SHALL INDICATE WHETHER THE CLAIM MEETS THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION. IF THE CLAIM DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION, THE TAX COLLECTOR SHALL IDENTIFY THE DEFICIENCY IN WRITING. ANY CLAIM THAT DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION SHALL NOT SECURE THE LIMITATION PERIOD PURSUANT TO SECTION 8A-550.
 - (2) THE TAX COLLECTOR MAY REQUEST, IN WRITING, ADDITIONAL INFORMATION OR DOCUMENTATION FROM THE CLAIMANT TO SUPPORT THE REQUESTED CREDIT OR REFUND. SUCH INFORMATION OR DOCUMENTATION MUST BE REASONABLY RELATED TO THE CLAIM AND REQUIRED TO BE MAINTAINED UNDER THIS CHAPTER IN THE NORMAL COURSE OF BUSINESS.
 - (A) THE CLAIMANT MAY REQUEST IN WRITING ONE OR MORE EXTENSIONS TO SUPPLY THE REQUESTED INFORMATION OR DOCUMENTATION. THE TAX COLLECTOR MAY REJECT AN EXTENSION REQUEST ONLY BY DENYING THE CLAIM IN WHOLE OR IN PART, SUBJECT TO APPEAL BY THE CLAIMANT PURSUANT TO SECTION 8A-570.
 - (B) A CLAIMANT AGGRIEVED BY A REQUEST FOR INFORMATION OR DOCUMENTATION UNDER THIS SUBSECTION MAY FILE AN APPEAL IN THE MANNER PROVIDED FOR IN SECTION 8A-570 REGARDING THE SCOPE OF THE REQUEST FOR INFORMATION OR DOCUMENTATION. SUCH PETITION MUST BE FILED NO LATER THAN THE LAST DAY BY WHICH REQUESTED INFORMATION OR DOCUMENTATION MUST BE PROVIDED TO THE TAX COLLECTOR, INCLUDING ANY EXTENSIONS . THE DECISION OF THE HEARING OFFICER REGARDING A REQUEST FOR INFORMATION OR DOCUMENTATION MAY NOT BE APPEALED BY EITHER PARTY UNTIL THE CLAIM HAS BEEN APPROVED OR DENIED , IN WHOLE OR IN PART, UNDER SUBSECTION (H) OF THIS SECTION OR THROUGH SUBSUBSECTIONS (E)(3) OR (E)(4) OF THIS SECTION. A CLAIMANT SHALL NOT BE BARRED FROM RAISING THE ISSUE OF THE REASONABLENESS OF THE TAX COLLECTOR'S INFORMATION OR DOCUMENTATION REQUEST IN AN APPEAL FILED UNDER SUBSECTION (H) OF THIS SECTION OR THROUGH SUBSUBSECTIONS (E)(3) OR (E)(4) OF THIS SECTION THROUGH A LACK OF FILING A PETITION UNDER THIS SUBSUBSECTION.
 - (3) IF THE TAX COLLECTOR FAILS TO REQUEST ADDITIONAL INFORMATION OR DOCUMENTATION PURSUANT TO THIS SECTION AND FAILS TO ISSUE A DETERMINATION ON ANY CLAIM FOR CREDIT OR REFUND WITHIN SIX (6) MONTHS AFTER THE CLAIM IS FILED, THE CLAIMANT MAY CONSIDER THE CLAIM DENIED AND MAY FILE AN APPEAL PURSUANT TO SECTION 8A-570.
 - (4) IF THE TAX COLLECTOR FAILS TO ISSUE A DETERMINATION WITHIN SIX (6) MONTHS OF RECEIVING ALL REQUESTED ADDITIONAL INFORMATION OR DOCUMENTATION, THE CLAIMANT MAY CONSIDER THE CLAIM FOR CREDIT OR REFUND DENIED AND MAY FILE AN APPEAL PURSUANT TO SECTION 8A-570.
 - (5) THE BURDEN OF PROOF TO SHOW THAT A NOTICE, REQUEST, DETERMINATION OR OTHER COMMUNICATION WAS RECEIVED BY THE CLAIMANT IN THIS SECTION IS ON THE TAX COLLECTOR, AND WILL BE SATISFIED BY RECEIPT OF NOTICE. THE BURDEN OF PROOF TO SHOW THAT A CLAIM OR ADDITIONAL INFORMATION OR DOCUMENTATION WAS RECEIVED BY THE TAX COLLECTOR IS ON THE CLAIMANT AND WILL BE SATISFIED BY RECEIPT OF NOTICE.

- (f) ~~Any refund paid under the provisions of this Section shall be paid from the privilege tax revenue accounts.~~
- (f) INTEREST SHALL BE ALLOWED ON THE OVERPAYMENT OF TAX FOR ANY CREDIT OR REFUND AUTHORIZED PURSUANT TO SUBSECTIONS (B)(3) OR (B)(4) OF THIS SECTION. SUCH INTEREST SHALL BE ALLOWED ON THE OVERPAYMENT OF TAX AT THE RATE AND IN THE MANNER SET FORTH IN SECTION 8A-540(A), EXCEPT THAT INTEREST SHALL BE ALLOWED PRIOR TO OCTOBER 1, 2005 AT THE RATE OF INTEREST EARNINGS ON THE TOWN OF FOUNTAIN HILLS TREASURER'S POOL FOR THE PERIOD OF TIME THE CASH WAS HELD THROUGH SEPTEMBER 30, 2005. INTEREST SHALL BE ALLOWED AS FOLLOWS:
- (1) FOR CREDITS OR REFUNDS AUTHORIZED PURSUANT TO SUBSECTION (B)(3) OF THIS SECTION, INTEREST SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM FOLLOWING THE DATE OF NOTICE TO THE CLAIMANT AUTHORIZING THE CREDIT OR REFUND.
 - (2) FOR CREDITS OR REFUNDS AUTHORIZED PURSUANT TO SUBSECTION (B)(4) OF THIS SECTION, INTEREST SHALL BE CALCULATED FROM THE DATE THE TAX COLLECTOR RECEIVES THE CLAIMANT'S WRITTEN CLAIM MEETING THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.
- (g) THE TAX COLLECTOR SHALL GIVE THE CLAIMANT A WRITTEN NOTICE OF DETERMINATION FOR A CLAIM MADE UNDER SUBSECTION (B) OF THIS SECTION. IF THE DETERMINATION IS A DENIAL OF A CLAIM, IN WHOLE OR IN PART, THE DETERMINATION MUST STATE THAT THE CLAIM FOR CREDIT OR REFUND HAS BEEN DENIED IN WHOLE OR IN PART, WITH THE REASON FOR DENIAL, AND MUST INCLUDE THE CLAIMANT'S RIGHTS OF APPEAL PURSUANT TO SECTION 8A-570.
- (h) A DETERMINATION BY THE TAX COLLECTOR UNDER THIS SECTION, WHETHER AN APPROVAL OF A CLAIM OR A DENIAL OF A CLAIM, IN WHOLE OR IN PART, SHALL BECOME FINAL FORTY-FIVE (45) DAYS FROM THE DATE OF RECEIPT OF THE NOTICE BY THE CLAIMANT, UNLESS AN APPEAL IS MADE PURSUANT TO SECTION 8A-570. IF THE CLAIMANT IS THE PREVAILING PARTY IN AN APPEAL OF A DETERMINATION UNDER THIS SECTION, SECTION 8A-578 SHALL APPLY, EXCEPT THAT REASONABLE FEES AND OTHER COSTS MAY BE AWARDED EITHER BY THE HEARING OFFICER OR COURT AND ARE NOT SUBJECT TO THE MONETARY LIMITATIONS OF SUBSECTION 8A-578(E) IF THE TAX COLLECTOR'S POSITION WAS NOT SUBSTANTIALLY JUSTIFIED OR WAS BROUGHT FOR THE PURPOSE OF HARASSING THE CLAIMANT, FRUSTRATING THE CREDIT OR REFUND PROCESS OR DELAYING THE CREDIT OR REFUND. FOR THE PURPOSES OF THIS SECTION, "REASONABLE FEES AND OTHER COSTS" MEANS FEES AND OTHER COSTS THAT ARE BASED ON PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF THE FURNISHED SERVICES, NOT TO EXCEED THE AMOUNTS ACTUALLY PAID FOR EXPERT WITNESSES, THE COST OF ANY STUDY, ANALYSIS, REPORT, TEST, PROJECT OR COMPUTER PROGRAM THAT IS FOUND TO BE NECESSARY TO PREPARE THE CLAIMANT'S CASE AND NECESSARY FEES FOR ATTORNEYS OR OTHER REPRESENTATIVES.
- (i) THE AMENDMENTS TO THIS SECTION AS ENACTED IN ORDINANCE # _____ SHALL BE EFFECTIVE AS FOLLOWS:
- (1) FOR ANY CLAIM FOR REFUND OR CREDIT RECEIVED BY THE TAX COLLECTOR BEFORE OCTOBER 1, 2005,
 - (A) THE PROVISIONS OF THIS SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF ORDINANCE # _____ SHALL APPLY, EXCEPT THAT INTEREST SHALL BE ALLOWED FROM AND AFTER OCTOBER 1, 2005 AS PROVIDED IN SUBSECTION (F) OF THIS SECTION AS ENACTED BY ORDINANCE # _____.
 - (B) EXCEPT AS NOTED IN SUBSECTION (1)(A) ABOVE, THE AMENDMENTS TO THIS SECTION AS ENACTED IN ORDINANCE # _____ SHALL NOT BE CITED OR CONSIDERED IN THE CONSTRUCTION OR THE INTERPRETATION OF THE CITY TAX REFUND OR CREDIT PROVISIONS, INTEREST PROVISIONS, OR APPEAL PROVISIONS IN EFFECT PRIOR TO OCTOBER 1, 2005.
 - (2) THE PROVISIONS OF THIS SECTION ENACTED BY ORDINANCE # _____ SHALL APPLY TO ALL CLAIMS FOR REFUND OR CREDIT, FOR ANY PERIODS AS DETERMINED BY SUBSECTIONS (D) OR (E) OF THIS SECTION, RECEIVED BY THE TAX COLLECTOR FROM AND AFTER OCTOBER 1, 2005, EXCEPT FOR CLAIMS THAT, IN WHOLE OR IN PART, HAD BEEN RECEIVED BY THE COLLECTOR PRIOR TO OCTOBER 1, 2005.

- (j) ANY REFUND PAID UNDER THE PROVISIONS OF THIS SECTION SHALL BE PAID FROM THE PRIVILEGE TAX REVENUE ACCOUNTS.

Section 4. Regulation 8A-250.1 of the Tax Code of the Town of Fountain Hills is amended to read:

Reg. 8A-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax RATE from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers. TAX PAID ON AN ACTIVITY THAT IS NOT SUBJECT TO TAX OR THAT QUALIFIES FOR AN EXEMPTION, DEDUCTION, EXCLUSION OR CREDIT IS NOT EXCESS TAX COLLECTED.

ORDINANCE NO. 06-17

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, RELATING TO THE PRIVILEGE LICENSE TAX; ADOPTING THE "2006 AMENDMENTS TO THE TAX CODE OF THE TOWN OF FOUNTAIN HILLS" BY REFERENCE; ESTABLISHING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY AND PROVIDING PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That certain document known as the "2006 Amendments to the Tax Code of the Town of Fountain Hills," three copies of which are on file in the office of the Town Clerk of the Town of Fountain Hills, Arizona, which document was mad public record by Resolution No. 2006-31 of the Town of Fountain Hills, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 2. Any person found guilty of violating any provision of the 2006 Amendments to the Tax Code of the Town of Fountain Hills shall be guilty of a class 1 misdemeanor. Each day that a violation continues shall be a separate offense, punishable by up to six months in jail and a fine not to exceed \$2,500.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The provisions of this Ordinance shall be effective retroactively from and after October 1, 2005.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, May 18, 2006.

FOR THE TOWN OF FOUNTAIN HILLS: ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney

**Town of Fountain Hills
Town Council Agenda Action Form**

Meeting Type: Regular Meeting

Meeting Date: 5-18-06

Submitting Department: Public Works

Contact Person: Tom Ward/ Randy Harrel

Consent: ☐

Regular: x

Requesting Action: x

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
- x Other: Approval of Traffic Control Change

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| x Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: Consideration of a traffic control change for the gated rear entrance to Kern Plaza.

Staff Recommendation: Approve **Fiscal Impact:** No

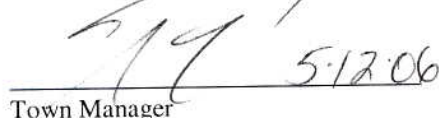
Purpose of Item and Background Information: Kern Plaza has requested to leave their rear, gated, emergency access driveway at the east end of Firebrick Drive open, until a traffic signal is constructed on Shea Blvd. at their main driveway. This request is based on traffic safety concerns and the difficulty of turning left onto Shea Blvd. (Duration is estimated to be 1-2 years).

List All Attachments as Follows: Staff report. Phyllis Kern letter of 3-28-06. Location map. Vicinity map.

Type(s) of Presentation: Staff.

Signatures of Submitting Staff:


Department Head


Town Manager

Budget Review
(if item not budgeted or exceeds budget amount)

**TOWN OF FOUNTAIN HILLS
PUBLIC WORKS DEPARTMENT
INTER OFFICE MEMO**

TO: Honorable Mayor and Town Council	DT: April 26, 2006
FR: John Morast, P.E., Asst. Public Works Dir. THRU: Tom Ward, Public Works Director	RE: Kern Plaza – Interim Request to Leave Firebrick Drive Emergency Access Rear Gate Open.

Phyliss Kern has requested (by letter of 3-28-06, attached) that the rear, emergency access gate at the end of Firebrick Drive into Kern Plaza be allowed to remain open until a traffic signal is in place on Shea Blvd. at their main entrance. That letter is based on traffic safety concerns and the difficulty of making a left turn onto Shea Blvd. during peak traffic hours. (Note: The Fire Marshal had previously administratively allowed this gate to be open – at their request - during some on-site events with anticipated high peak traffic volumes, with no reported adverse effects.)

The access from Firebrick Drive was intended to be utilized for fire access, for access during a construction closure of Kern Plaza's driveway(s), and for emergency access for eastbound Shea Blvd. traffic during a road-closing traffic accident (between Saguaro Blvd. and the east Town limit). Staff had not wanted to have a permanently open rear access at Firebrick Drive, due to concern about cut-through traffic going through Kern Plaza to Shea Blvd., and due to a long-term concern of excessive traffic accessing the site from Firebrick Drive – after build-out of both Kern Plaza/ Red Rock Plaza.

Kern Plaza's stipulations and recorded Grant of Easement map require them to bond for and to construct a traffic signal at their westerly driveway onto Shea Blvd. Warrants for that traffic signal's construction are anticipated to be met with occupancy of the second building at Kern Plaza/ Red Rock Plaza. The Town has committed (in the Grant of Easement Map) to allowing construction of the traffic signal concurrent with construction of that second on-site building. (One building is currently constructed on the site, and plans for Red Rock Plaza have been submitted for review.) Staff anticipates that an operational traffic signal will, therefore, likely be in place at the Kern Plaza/Red Rock Plaza's main driveway onto Shea Blvd. in 1-2 years. Therefore, this interim request to leave the emergency access gate from Firebrick Drive open is likely to be for a 1-2 year period.

Staff currently does not have a record of any traffic accidents at the Kern Plaza driveway entrance/ Shea Blvd. intersection. Staff field reviewed the current traffic movements from Kern Plaza onto Shea Blvd. on Friday 4-21-06 from 3:00-4:00 PM. There were 4 left-turning vehicles from Kern Plaza onto Shea Blvd., which had an average stopped delay of 9 seconds. A 10-second gap in Shea Blvd. traffic (both directions) occurred only once every 3-minutes (with a 5-second gap occurring only once every 30 seconds), which could lead to driver frustration and/or accidents.

Kern Plaza – Interim Request to Open Rear Gate

Staff has provided notification to the neighborhood of this Town Council agenda item, by posting the site.

Staff is currently collecting traffic counts near the east end of Firebrick Drive for a “before” baseline count. If the proposed gate opening is allowed, Staff will conduct an “after” count, and periodically collect counts as needed thereafter, to verify that cut-through traffic is not using this route to access Shea Blvd. (Should excessive cut-through traffic occur, Staff will require additional measures by Kern Plaza– such as requiring the gate to be chained closed daily, or an employee card-activated gate with an emergency vehicle opticom detector - to be put in place in order for the rear access to continue to be utilized.)

Staff recommends approval of an interim opening of the emergency access from Firebrick Drive into Kern Plaza, until a traffic signal is operational at the west Kern Plaza driveway, with the following stipulations:

- Approval is valid for 1 year, and may be extended or renewed by the Town Council.
- Approval may be revoked, or additional requirements set by Town Staff, should excessive cut-through traffic, speeding, accidents, citizen complaints, or other undesirable, unresolved traffic situations occur as a result of this action.

Cc: Randy Harrel
Eric Kriwer/ Fire Marshal - FHFD
Captain John Kleinheinz/ MCSO

Attachments: Phyliss Kern letter of 3-28-06.
Kern Plaza traffic movements map.
Firebrick Drive traffic movements map.



Sales Office
17251 E. Shea Blvd, Suite 1
Fountain Hills, Arizona 85268
Office (480) 837-5833
Fax (480) 837-5659

Rental Office
17031 E. El Lago Blvd.
Fountain Hills, Arizona 85268
Office (480) 837-5833
Fax (480) 816-0902

March 28, 2006

Town of Fountain Hills
Attention: Randy Harrell
Facsimile: 480-837-1404

Re: Kern Plaza

Dear Mr. Harrell:

I would like to appeal to you regarding the chain gate that is at the rear of my property at Kern Plaza (for emergency access). The chain prevents traffic coming through our parking lot off of or onto Firebrick Drive.

My tenants, Saguaro Blossom Mortgage, Grand Canyon Title and Century 21 Kern Realty have all come to me and requested I do whatever I can to make a safer entrance/exit to the Plaza for their employees and clients. We all have unfortunately witnessed too many "near-misses" with people trying to exit and cross over Shea Boulevard. The traffic is so constant off the Beeline Highway and down Shea that it makes it tremendously difficult to exit the Plaza safely.

I am asking that the chain be removed from the rear of the property until the traffic light is installed on Shea Boulevard. This would allow employees and clients to enter and exit off of Saguaro/Firebrick Drive safely. As the property owner I certainly don't mind the increased traffic in the parking lot, especially if it will decrease likelihood of car or pedestrian accidents.

I appreciate your consideration and look forward to hearing from you.

Sincerely,


Phyllis Kern
Kern Plaza

Each Office Is Independently Owned And Operated



PUBLIC WORKS

KERN PLAZA
PROPOSED TEMPORARY
GATE OPENING

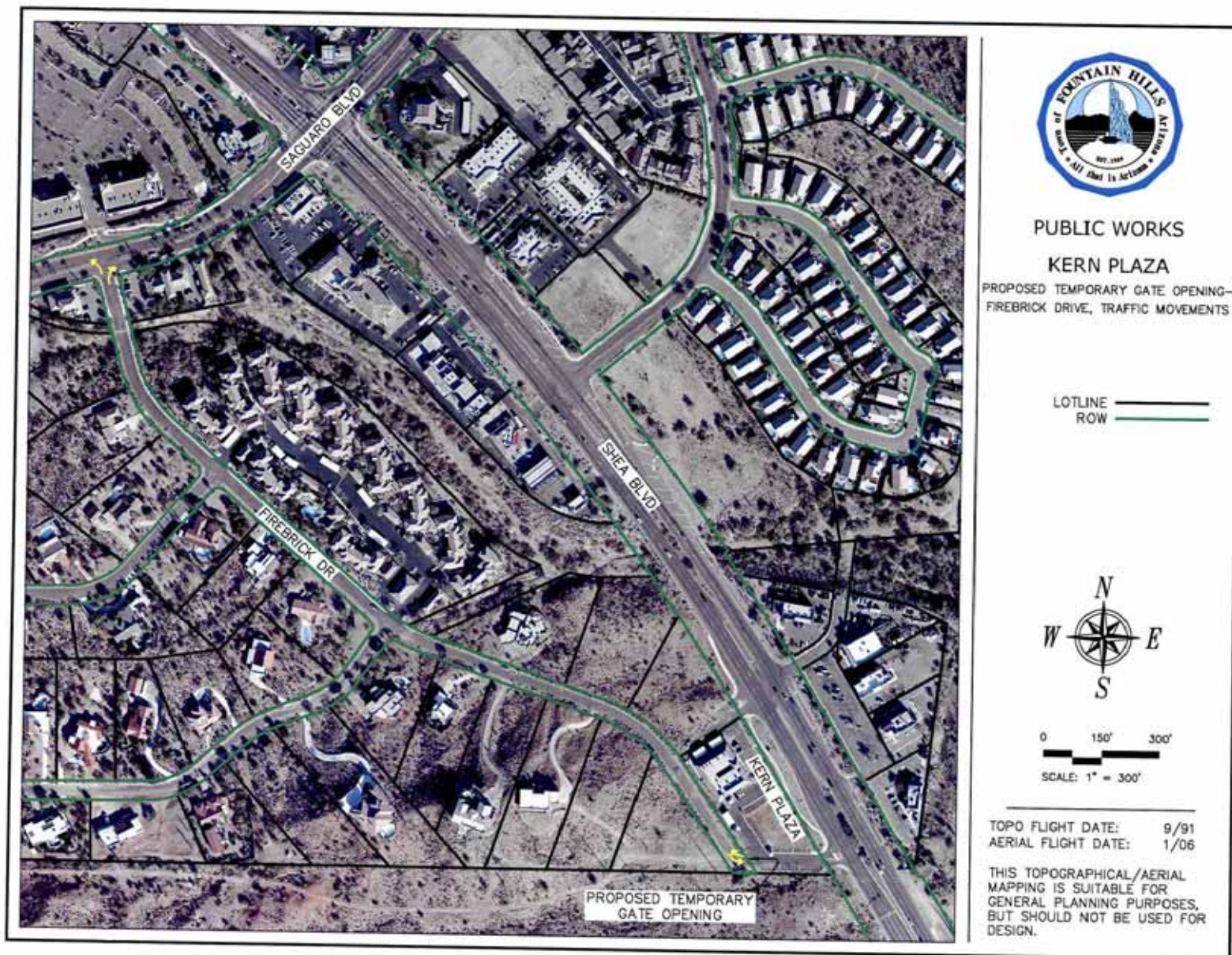
LOTLINE
ROW
CENTERLINE



0 50' 100'

SCALE: 1" = 100'

AERIAL FLIGHT DATE: 1-1-06
THIS AERIAL MAPPING IS
SUITABLE FOR GENERAL
PLANNING PURPOSES, BUT
SHOULD NOT BE USED FOR
DESIGN.



**Town of Fountain Hills
Town Council Agenda Action Form**

Meeting Type: Regular Meeting

Meeting Date: 05/18/2006

Submitting Department: Public Works

Contact Person: Robert Rodgers, Senior Planner

Consent: ☐

Regular: ☒

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input checked="" type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|---|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input checked="" type="checkbox"/> Community Development | |

Regular Agenda Wording: CONSIDERATION of a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 AM for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106 aka Four Peaks Plaza. Case SU2006-04.

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: This Special Use Permit request is for extended hours of operation. The new Starbucks coffee shop to be located in Four Peaks Plaza would like to open at the company standard of 5:00 AM. The rezoning application for Four Peaks Plaza Z1999-24 PUD stipulated a business opening time of no earlier than 6:00 AM without a Special Use Permit. The Planning and Zoning Commission recommended approval of this application at their April 27, 2006 meeting by a 5-2 vote.

List All Attachments as Follows: Staff Report Memorandum, Case Map, April 27, 2006 Planning and Zoning Commission Meeting Minutes, Application, Applicant Narrative, Site Map Reduction.

Type(s) of Presentation: None

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager / Designee

**TOWN OF FOUNTAIN HILLS
MAYOR AND TOWN COUNCIL
STAFF REPORT**

TO: Mayor and Town Council	MTG DT: May 18, 2006
FR: Robert Rodgers, Senior Planner THR: Richard Turner, AICP Planning and Zoning Administrator	RE: SU 2006-04; “Starbucks” at Four Peaks Plaza

LOCATION: 16815 East Shea Boulevard, Suite #106, aka Four Peaks Plaza.

REQUEST: For approval to open the business at 5:00 AM.

DESCRIPTION:

APPLICANT: Steven Morrow
OWNER: Karen Gleason
EXISTING ZONING: “C-2 PUD”
EXISTING CONDITION: Vacant Suite

SURROUNDING LAND USES AND ZONING:

NORTH: Single-Family Residential; zoned “R1-35”
SOUTH: Vacant Industrial; zoned “I-2 IUPD”
EAST: Four Peaks Plaza retail shop; zoned “C-2 PUD”
WEST: Four Peaks Plaza retail shop; zoned “C-2 PUD”

SUMMARY:

This request is for extended hours of operation. The new Starbucks coffee shop to be located in Four Peaks Plaza would like to open at the company standard time of 5:00 AM. The rezoning application for Four Peaks Plaza, Z1999-24 PUD, stipulated a business opening time of no earlier than 6:00 AM without a Special Use Permit. The Starbucks will be in Suite 106, which is west of the Target. The Suite is approximately 1,750 square feet.

EVALUATION:

The PUD for Four Peaks Plaza, Z1999-24 PUD, requires that all businesses that wish to operate between 12:00 AM and 6:00 A.M. Monday to Friday mornings and 1:00 AM to 6:00 AM on Saturday and Sunday mornings shall only be permitted to do so by a Special Use Permit. This request by Starbucks is consistent with the standard hours of operation of many coffee shops in the Phoenix Metropolitan Area and elsewhere in the nation. As well, the Starbucks on the south east corner of Palisades Boulevard and Avenue of the Fountains opens at 5:00 AM.

Starbucks at Four Peaks Plaza
SU2006-04

Several screening improvements are already present at Four Peaks Plaza in the form of landscaping and fencing. There is a 10-foot landscape buffer along Shea Boulevard, landscape islands in the parking lot area, and landscaping along the front of the buildings. A 3.5-foot screen wall also exists

along the north property line along Shea Boulevard to screen the parking lot area from the residential properties across the street. There is also approximately a 200 foot parking lot buffer between Suite 106 and Shea Boulevard. In addition, the majority of the vehicular traffic at Four Peaks Plaza moves in an east-west pattern therefore minimizing any potential headlight activity towards the residential properties to the north.

The PUD for Four Peaks Plaza, Z1999-24 PUD, requires that all businesses turn off their wall signs between the hours of 11:00 PM and 6:00 A.M. This regulation does have a provision that if a Special Use Permit is granted to allow extended hours of operation the business lighting regulations can be amended to match the hours of operation for that particular business. Staff is suggesting that a stipulation be added to the permit requiring that all signage shall be illuminated no later than 11:00 PM and no earlier than 5:00 AM.

Zoning Ordinance 5.19.A on Noise Performance Standards requires that, at no point on the property line shall the sound pressure level of any individual operation exceed the decibel levels in the designated octave bands. All outdoor activities will need to meet this specified performance standard. While at this time the applicant is not proposing any outdoor activities, staff would like to add this performance standard as a stipulation to the permit to ensure that if any outdoor seating is proposed in the future it is compliant with Town Noise Performance Standards.

RECOMMENDATION:

The Planning and Zoning Commission recommended approval of SU2006-04 by a 5-2 vote with the stipulations by Staff.

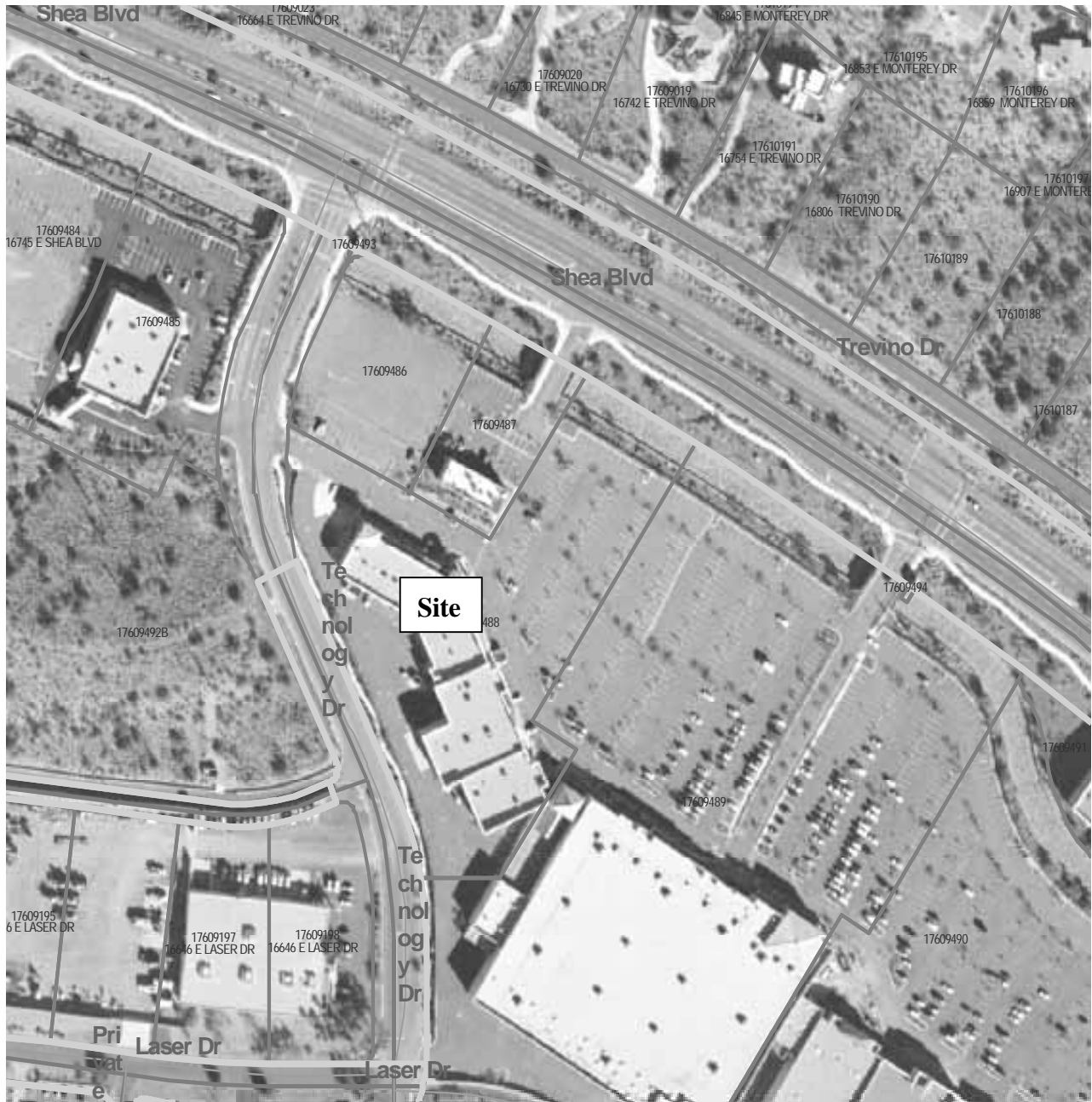
Staff recommends approval of Special Use Permit SU2006-04; a “Starbucks” coffee shop located in the Four Peaks Plaza opening at 5:00 AM with the following stipulations:

1. The business shall not open to the public earlier than 5:00 AM
2. All Town Noise Performance Standards and Outdoor Lighting Controls shall be met regardless of any other provision attached to this Special Use Permit.
3. All signage shall be illuminated no later than 11:00 PM and no earlier than 5:00 AM.

Attachments:

1. Case Map
2. April 27, 2006 Planning and Zoning Commission meeting minutes
3. Special Use Permit Application
4. Applicant Narrative
5. Site Plan

Starbucks at Four Peaks Plaza
SU2006-04
CASE MAP



TOWN OF FOUNTAIN HILLS
MINUTES OF REGULAR MEETING OF THE
PLANNING & ZONING COMMISSION
APRIL 27, 2006

Chairman Brown opened the regular meeting of the Planning and Zoning Commission at 6:30 p.m.

Present for roll call were the following members of the Fountain Hills Planning and Zoning Commission: Chairman Brown, Vice-Chairman Caldwell, Commissioner Downes, Commissioner Forest, Commissioner Ewald, Commissioner Kasabuski and Commissioner McDonald. Planning and Zoning Administrator, Richard A.G. Turner, A.I.C.P., Senior Planner, Robert Rodgers, Planning Assistant, Planner, Kate Zanon and Recorder of the Minutes, Janice Baxter were also present.

REGULAR AGENDA

AGENDA ITEM #4 - CONSIDERATION of a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 a.m. for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106, aka Four Peaks Plaza. Case #SU2006-04.

Kate Zanon, Planner, gave the presentation and included a PowerPoint Presentation. Staff recommended approval of Special Use Permit SU2006-04, a “Starbucks” coffee shop located in the Four Peaks Plaza opening at 5:00 a.m. with the following stipulations:

1. The business shall not open to the public earlier than 5:00 a.m.
2. All Town “Noise Performance Standards” and “Outdoor Lighting Controls” shall be met regardless of any other provision attached to this Special Use Permit.
3. All signage shall only be illuminated no later than 11:00 p.m. and no earlier than 5:00 a.m.

Vice-Chairman Caldwell asked if there were a proposed drive-thru. Ms. Zanon answered that the suite was located on the interior of the building and a drive-thru was not possible. Vice-Chairman Caldwell asked if rear signage had been requested that could be a negative to the residents in the area. Ms. Zanon stated that she had not seen the signage proposal but the applicant indicated that the only sign would be located on the front of their suite.

Commissioner Forest asked if there would be additional signage for “Starbucks” on the monument sign located along Shea Boulevard. Ms. Zanon stated the monument sign located in front of the “Target” store was scheduled to be turned off at 11:00 p.m. and turned on no earlier than 6:00 a.m. Ms. Zanon also stated that not all businesses in the center advertise on the monument sign and so far there was no indication “Starbucks” wished to advertise on this sign.

Steven Morrow, Looker and Cappello Architects, Inc., the applicant, was present. The Commission had no questions for the applicant.

Starbucks at Four Peaks Plaza
SU2006-04

Commissioner Downes expressed his concern for a residual affect this Special Use Permit could have if approved. His concern was that other businesses in the complex would request extended hours making the PUD obsolete.

Commissioner Forest stated that breakfast businesses should be allowed to open earlier in the morning because of the nature of those businesses.

Commissioner Kasabuski agreed with Commissioner Downes and stated that the small home atmosphere could be lost if approvals of this kind were made.

Commissioner Downes stated he did not feel that “Starbucks” coffee shop would be affected by adhering to the PUD and opening at 6:00 a.m. instead of 5:00 a.m. Commissioner Downes stated that the PUD was in place for a reason.

Commissioner McDonald stated he approved of “Starbucks” opening at 5:00 a.m. Commissioner McDonald continued to say that the early hours would benefit the people of the Town who enjoyed the early morning hour and the amenity. Commissioner McDonald added that any individual applicants requesting to be open earlier should be evaluated on an individual basis.

Chairman Brown said he understood why a PUD for this center was agreed upon and at that time, it was in the interest of the residents in this area. Chairman Brown added that there was a fear of excessive lights and noise in a newly proposed shopping center. Chairman Brown stated that he agreed with the Special Use Permit and that the early hour was appropriate for this kind of business. Chairman Brown continued that he supported this request and if other requests were made in the future, each would be evaluated on a case-by-case basis.

Vice-Chairman Caldwell agreed with Chairman Brown and stated he would support this request.

Commissioner Ewald **MOVED** to recommend to Town Council approval of the Special Use Permit request for “Starbucks”, case number SU2006-04, with the stipulations recommended by Staff. Commissioner Ewald stated that he recommended approval because the request was not in conflict with the operation of the shopping center. Commissioner Forest **SECONDED** the **MOTION**.

Commissioner Downes	nay
Commissioner Ewald	aye
Commissioner Kasabuski	nay
Commissioner McDonald	aye
Chairman Brown	aye
Commissioner Forest	aye
Commissioner Caldwell	aye

The motion CARRIED 5-2. Commissioner Downes and Commissioner Kasabuski gave the nay votes.

Starbucks at Four Peaks Plaza
SU2006-04



RECEIVED

MAR 29 2006

FOUNTAIN HILLS
PLANNING & ZONING

The Town of Fountain Hills

Do not write in this space - official use only
Filing Date 3/28/06
Accepted By MA
Fee Accepted \$250.00 CK # 4411
Case Manager Kate Thomas

PLANNING & ZONING DIVISION - APPLICATION

Case 4-2-06: No fee Mr. Morrow
to return my cash fee

CK overpayment of \$20.00
\$805.00 due CK # 4628 ft

<input type="checkbox"/> Abandonment (Plat or Condominium)	<input type="checkbox"/> Administrator's Interpretation or Appeal
<input type="checkbox"/> Area Specific Plan	<input type="checkbox"/> Condominium Plat
<input type="checkbox"/> Continuance Request	<input type="checkbox"/> Cut/Fill Waiver
<input type="checkbox"/> General Plan Amendment	<input type="checkbox"/> HPE Change or Abandonment
<input type="checkbox"/> Planned Unit Development	<input type="checkbox"/> Preliminary / Final Plat
<input type="checkbox"/> Rezoning	<input checked="" type="checkbox"/> Special Use Permit
<input type="checkbox"/> Temporary Use Permit	<input type="checkbox"/> Variance
<input type="checkbox"/> Other	

PROJECT NAME / NATURE OF PROJECT: STARBUCKS COFFEE - REQUEST TO
EXTEND BUSINESS HOURS, TO OPEN AT 5:00 A.M.

LEGAL DESCRIPTION: Plat Name _____ Block _____ Lot _____
PROPERTY ADDRESS: 16815 E. SHEA BLVD, SUITE 106
PARCEL SIZE (Acres) 26.88 ASSESSOR PARCEL NUMBER 176-09-488
NUMBER OF UNITS PROPOSED 1 TRACTS —
EXISTING ZONING C-2 PUD PROPOSED ZONING NO CHANGE

Applicant

☐ Mrs. STEVEN MORROW, LOCKER + CARPELLO ARCHITECTS Day Phone 480.730.1776x103
☒ Mr. _____
☐ Ms. Address: 2070 E. SOUTHERN AVE. City: TEMPE State: AZ Zip: 85282
Email: STEVE@lookerarch.com

Owner

☐ Mrs. KAREN GLEASON, STARBUCKS COFFEE CO. Day Phone 602.265.0882x2829
☐ Mr. _____
☒ Ms. Address: 1661 E. CAMELBACK RD, STE 340 City: PHOENIX State: AZ Zip: 85016

If application is being submitted by someone other than the owner of the property under consideration, the section below must be completed.

SIGNATURE OF OWNER TERRY M. PROCTOR DATE 3/27/06

I HEREBY AUTHORIZE TERRY M. PROCTOR TO FILE THIS APPLICATION.
Please Print

Subscribed and sworn before me this 27th day of March, 2006

Mary Frances Rimicini
Notary Public

My Commission Expires 1-9-09



Application
Page 2 of 5
C:\Documents and Settings\McCarrone\My Documents\Starbucks Application.doc
Spoke to Mr. Morrow - 4-4-06 -
Returned CK with business hours one
and mail fee
FOUNTAIN HILLS
PLANNING & ZONING

RECEIVED

Case Number
SU2006-04

Starbucks at Four Peaks Plaza
SU2006-04



2070 E. Southern Ave. • Tempe, AZ 85282 • Voice (480)730-1776 • FAX (480) 968-6571

Special Use Permit

Narrative Report

Date: 03.24.06

To: Planning and Zoning Dept.
Town of Fountain Hills

Re: Proposed Starbucks
Four Peaks Plaza
16815 E. Shea Blvd., Suite 106, Fountain Hills

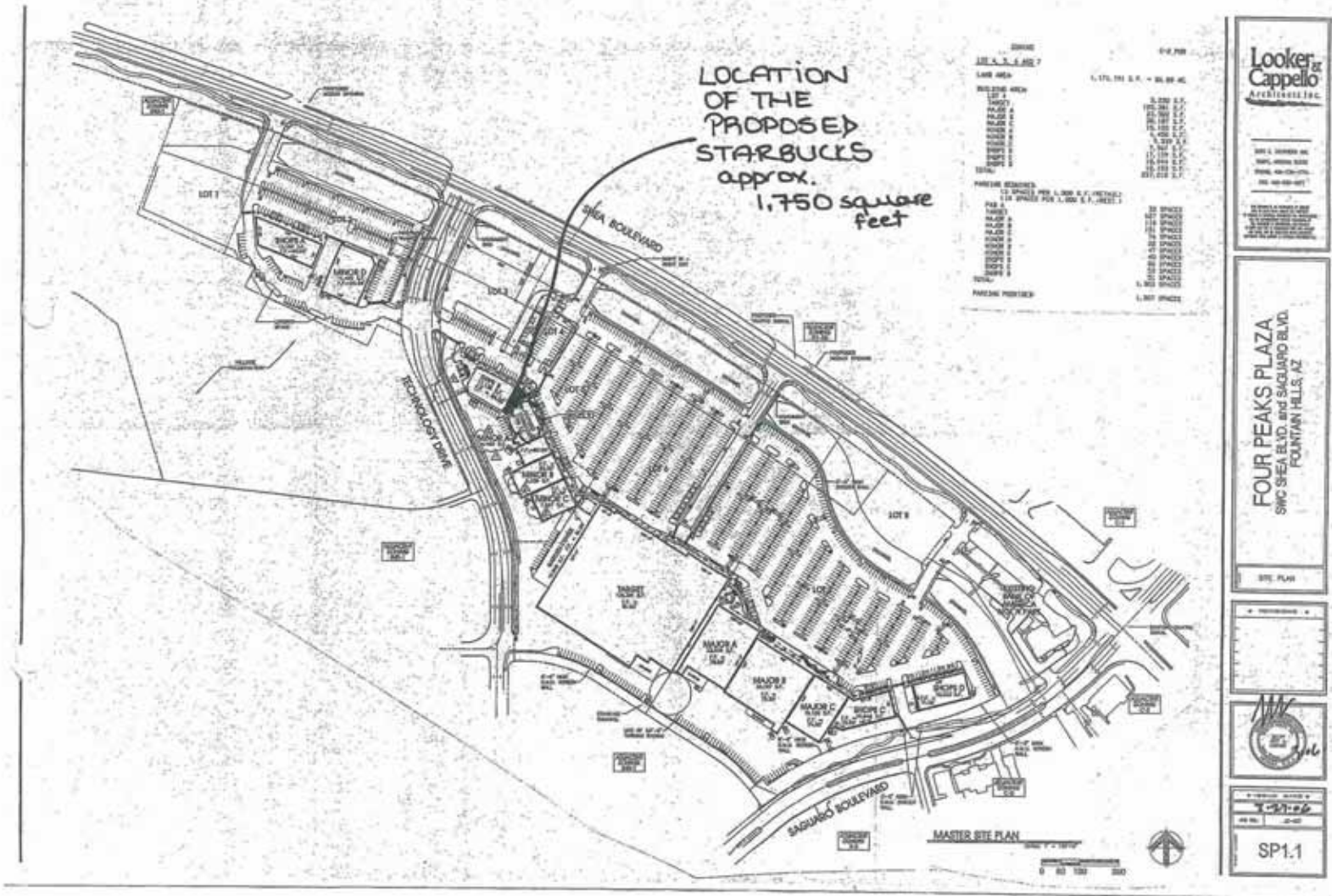
Starbucks Coffee Company is applying to the Town of Fountain Hills to open a Starbucks Coffee location at the above address. The purpose of this Special Use Permit application is as follows:

This Special Use Permit is being applied for so that the proposed Starbucks at Four Peaks Plaza may be allowed to open at 5:00 a.m. daily. This proposed Starbucks location is approximately 500' away from the closest residentially zoned property (R1-35), which is across Shea Blvd. Other properties within 1000' of the proposed Starbucks are zoned IND-1 or Hillside Preservation.

Sincerely,

Steven H. Morrow
Looker & Cappello Architects Inc

Starbucks at Four Peaks Plaza
SU2006-04



Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular

Meeting Date: 5/18/05

Submitting Department: Administration

Contact Person: Tim Pickering

Consent: ☐

Regular: ☒

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: Council Rules of Procedure | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input checked="" type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: **CONSIDERATION** of Ordinance No. 06-14 amending the Fountain Hills Town Code, Chapter 3, Administration, Chapter 4, Public Safety, Chapter 12, Traffic, and Chapter 18, Alarm Systems, relating to the office and duties of the Town Marshall. .

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: The Town Attorney was requested by the Council some time ago to complete this necessary clean-up work. This text amendment is necessary in order to provide accurate verbiage in the Town Code. Staff recommends approval.

List All Attachments as Follows: Proposed Ordinance 06-14.

Type(s) of Presentation: Verbal

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager

ORDINANCE NO. 06-14

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 3, ADMINISTRATION, CHAPTER 4, PUBLIC SAFETY, CHAPTER 12, TRAFFIC, AND CHAPTER 18, ALARM SYSTEMS, RELATING TO THE OFFICE AND DUTIES OF THE TOWN MARSHALL.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That the Fountain Hills Town Code, Chapter 3, Administration, Article 3-1, Officers in General, Section 3-1-5, Town Marshall, is hereby amended as follows:

Section 3-1-5 Town Marshall/LAW ENFORCEMENT AGENT

The TOWN MANAGER, OR DESIGNEE, SHALL SERVE AS THE town marshal/LAW ENFORCEMENT AGENT AND shall PROVIDE FOR ENFORCEMENT OF ~~enforce~~ town ordinances. THE TOWN MANAGER SHALL HAVE THE AUTHORITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT OR CONTRACT FOR THE PROVISION OF LAW ENFORCEMENT SERVICES. Enforcement will be effected by either issuance of citations or summons and complaint to persons accused of violating town ordinances.

SECTION 2. That the Fountain Hills Town Code, Chapter 3, Administration, Article 3-1, Officers in General, Section 3-1-6, Department Heads, Subsection (A)(4), is hereby deleted in its entirety.

SECTION 3. That the Fountain Hills Town Code, Chapter 4, Public Safety, Article 4-1, Marshal's Department, Article 4-2, Contract for Additional Law Enforcement Services, and Article 4-3, Town Marshal's Reserve Officers Program, are hereby deleted in their entirety.

SECTION 4. That the Fountain Hills Town Code, Chapter 4, Public Safety, Article 4-4, Fire Protection Services, Section 4-4-1, Fire Protection Services, and Section 4-4-2, Fire Protection Services Director, are hereby renumbered Article 4-1, Section 4-1-1 and Section 4-1-2, respectively.

SECTION 5. That the Fountain Hills Town Code, Chapter 12, Traffic, Article 12-3, Parking, Section 12-3-11, Commencement of Proceedings for Violations, Subsection (A), is hereby amended as follows:

Section 12-3-11 Commencement of Proceedings for Violations

A. An action to hear and determine an alleged violation of this article shall be commenced by issuance of a citation by ~~the town marshal, deputy town marshal or other~~ A peace officer of the State of Arizona OR THE TOWN MANAGER OR HIS AUTHORIZED DESIGNEE.

SECTION 6. That the Fountain Hills Town Code, Chapter 12, Traffic, Article 12-4, Private Parking, Section 12-4-4, Notice to Marshal and Sheriff, is hereby amended as follows:

Section 12-4-4 Notice to ~~Marshal~~ TOWN LAW ENFORCEMENT AGENT and Sheriff

Any person towing or transporting any vehicle from a private parking area without the express permission of the vehicle owner, shall notify the town ~~marshal~~ LAW ENFORCEMENT AGENT and the Maricopa County sheriff's office immediately upon the taking of such action and provide the following information:

. . .

SECTION 7. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-1, Generally, Section 18-1-2, Definitions, is hereby amended as follows:

Section 18-1-2 Definitions

. . .

“Police” means the town ~~marshal’s office~~ LAW ENFORCEMENT AGENT or the Maricopa County Sheriff’s Office.

. . .

SECTION 8. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-1, Generally, Section 18-1-4, Administration, is hereby amended as follows:

Section 18-1-4 Administration

The administration of this chapter, including the duty of prescribing forms, is vested in the town ~~marshal~~ LAW ENFORCEMENT AGENT or ~~his~~ AUTHORIZED designee. License and permit applications made pursuant to this chapter shall be submitted to the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE, who shall have the authority to issue, deny or revoke a permit or license in accordance with the provisions of this chapter. The town ~~marshal~~ LAW ENFORCEMENT AGENT or AUTHORIZED designee shall be responsible for review procedures, hearings or related activities provided for in this chapter.

SECTION 9. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-2, Alarm Businesses, Section 18-2-1, License Required; Term; Fees, Subsection (F) is hereby amended as follows:

Section 18-2-1 License Required; Term; Fees

F. Upon request and the payment of a ten dollar fee, the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE shall issue a duplicate license to a licensee whose license has been lost, stolen or destroyed.

SECTION 10. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-2, Alarm Businesses, Section 18-2-2, Application; Investigation, is hereby amended as follows:

Section 18-2-2 Application; Investigation

A. Application for an alarm business license, or a license renewal, shall be made to the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE, upon forms prepared and approved by the town, and contain the following information:

. . .

8. Additional information deemed by the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE to be reasonably necessary to fully and fairly evaluate the license application.

B. All applicants for licenses under this article shall personally appear at the ~~town police department or such other~~ location as ~~may be~~ designated by the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE, for the purpose of being fingerprinted. For the purposes of this subsection, “applicant” shall include all general partners, if the applicant is a partnership, the president, secretary and treasurer, if the applicant is a corporation, and all agents who perform services on behalf of the applicant within the town. Any applicant residing outside of Maricopa County, Arizona, shall appear at a local law enforcement agency or authorized fingerprinting facility within the jurisdiction of applicant’s residence for such fingerprinting. The applicant shall transmit the fingerprints to the town ~~marshal’s office~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE in an envelope specified for such purpose and provided by the town ~~marshal’s office~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE at the time of application. The ~~marshal’s department~~ TOWN LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE shall conduct a background investigation of the applicant ~~and shall advise the town marshal of the findings of such investigation~~ within the period allowed for issuance of the license.

C. The duty to provide the information required in subsections A and B of this section is continuing throughout the license term. The applicant shall notify the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE in writing within ten days of employing any agent who performs services on behalf of the applicant within the town.

D. The town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE shall have sixty days from the date of completion of all application materials and requirements to either issue or deny any license subject to this article. The issuance of any license shall be in no way construed as a waiver of any right of denial or revocation the town may have at the time of issuance or thereafter.

SECTION 11. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-2, Alarm Businesses, Section 18-2-3, Issuance, is hereby amended as follows:

Section 18-2-3 Issuance

A. The town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE shall issue a license to an applicant or renew a license, if applicable, when the following conditions are fully satisfied:

. . .

B. The following reasons may constitute sufficient grounds for denial of license or denial of renewal of a license:

. . .

4. The town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE has reasonable grounds to believe that the licensee has shown a pattern of repeated noncompliance or disregard with the provisions of this chapter.

SECTION 12. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-2, Alarm Businesses, Section 18-2-8, Revocation; Appeals, is hereby amended as follows:

Section 18-2-8 Revocation; Appeals

A. The town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE shall initiate license revocation proceedings when there are reasonable grounds to believe that any of the conditions of paragraphs 1 through 5 of subsection B of Section 18-2-3 exist.

B. Any person aggrieved by any decision with respect to either the denial of or refusal to issue a license, or the renewal of a license, or revocation of a license, which is the subject of this chapter, shall be entitled to appeal to the town council. All notices of appeal under this chapter shall be filed with the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE.

SECTION 13. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-4, Review, Hearing and Miscellaneous, Section 18-4-1, Service Charge Review, is hereby amended as follows:

Section 18-4-1 Service Charge Review

An alarm user may file a written request for a service charge review by the town ~~marshal~~ LAW ENFORCEMENT AGENT or ~~her~~ AUTHORIZED designee. The request for service charge review must be received by the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE not later than the delinquent date for the payment of the assessment for which the review is being sought. Requests received after the delinquent date shall be deemed untimely and the rights of service charge review and hearing shall be deemed waived as to those assessments.

. . .

C. An alarm user may present evidence that a series of concurrent alarm activations were caused by a “common cause,” which could not have been reasonably corrected before subsequent activations occurred, in which case, the activations shall be counted as a single activation. This provision shall only apply to commonly caused activations occurring within a forty-eight hour period, commencing with the first commonly caused activation, provided that the responsible alarm business has documented, to the town ~~marshal~~ LAW ENFORCEMENT AGENT OR AUTHORIZED DESIGNEE, the action taken to rectify the cause and there are no additional activations of the alarm system from the documented cause within thirty days from the documented cause.

SECTION 14. That the Fountain Hills Town Code, Chapter 18, Alarm Systems, Article 18-4, Review, Hearing and Miscellaneous, Section 18-4-2, Hearing; Notice, is hereby amended as follows:

Section 18-4-2 Hearing; Notice

A. Any party aggrieved by the decision resulting from a service charge review may request a hearing on the service charge by filing a written request for a hearing within ten days of receipt of decision of the reviewer. The request shall be filed, in writing, with the town ~~marshal~~ LAW ENFORCEMENT AGENT or ~~his~~ AUTHORIZED designee.

SECTION 15. That if any provision or any portion of any provision of this Ordinance is for any reason held to be unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such provision or portion thereof shall be deemed separate, distinct and independent of the remaining provisions of this Ordinance and shall be severed therefrom without affecting the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Arizona, May 18, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular Meeting

Meeting Date: 5/18/2006

Submitting Department: Finance

Contact Person: Julie Ghetti

Consent: ☐

Regular: ☒

Requesting Action: ☒

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: | | |

Council Priority (Check Appropriate Areas):

- | | | |
|---|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input checked="" type="checkbox"/> Finance |

Regular Agenda Wording: CONSIDERATION of RESOLUTION 2006-18 ADOPTING THE maximum amount for the Town of Fountain Hills Fiscal Year 2006-07 TENTATIVE BUDGET with appropriate direction to publish said document in accordance with state law. The Council may address any or all items contained in the budget document and initiate any suggested changes prior to adoption.

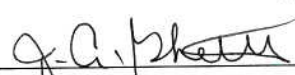
Staff Recommendation: Approve **Fiscal Impact:** Yes \$26.7M (not to exceed)

Purpose of Item and Background Information: The annual budget for the Town of Fountain Hills was presented to the public and Town Council at a work study session on May 9, 2006. Additionally, the proposed budget has been posted on the Town website and copies are available in the Town Clerk's office and public library. Approval of Resolution 2006-18 establishes the maximum amount of expenditures for the Fiscal Year beginning July 1, 2006 and ending June 30, 2007; amendments to individual line items and/or departments can be made until the final budget adoption in June.

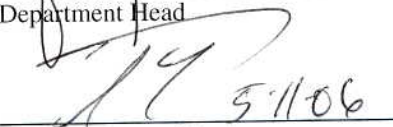
List All Attachments as Follows: Resolution 2006-18

Type(s) of Presentation: None

Signatures of Submitting Staff:



Department Head



Town Manager / Designee

Budget Review
(if item not budgeted or exceeds budget amount)

RESOLUTION NO. 2006-18

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, SETTING FORTH THE TENTATIVE BUDGET AND ESTABLISHING THE MAXIMUM AMOUNT FOR THE TOWN OF FOUNTAIN HILLS FOR FISCAL YEAR 2006-2007.

WHEREAS, pursuant to the provisions of the laws of the State of Arizona, the Mayor and Council of the Town of Fountain Hills (the "Town Council") is required to adopt a budget; and

WHEREAS, the Town Manager has prepared and filed with the Town Council the Town Manager's Budget estimates for the fiscal year beginning July 1, 2006 and ending June 30, 2007.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That the statements and schedules attached hereto as Exhibit A and incorporated herein by reference are hereby adopted as the Town's official tentative budget for the fiscal year beginning July 1, 2006 and ending June 30, 2007, including the establishment of the maximum amount for such fiscal year in the amount of \$26,743,649.

SECTION 2. That, upon approval of the Town Council, such official tentative budget shall be published in the official Town newspaper once a week for two consecutive weeks.

PASSED AND ADOPTED BY the Mayor and Council of the Town of Fountain Hills, Arizona, May 18, 2006.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

W. J. Nichols, Mayor

Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Timothy G. Pickering, Town Manager

Andrew J. McGuire, Town Attorney

EXHIBIT A
TO
RESOLUTION NO. 2006-18

[Tentative Budget]

See following pages.

Town of Fountain Hills
Town Council Agenda Action Form

Meeting Type: Regular

Meeting Date: 5/18/05

Submitting Department: Administration

Contact Person: Tim Pickering

Consent: ☐

Regular: ☒

Requesting Action: ☐

Report Only: ☐

Type of Document Needing Approval (Check all that apply):

- | | | |
|--|---|---|
| <input type="checkbox"/> Public Hearing | <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Emergency Clause | <input type="checkbox"/> Special Event Permit |
| <input type="checkbox"/> Special Consideration | <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Acceptance |
| <input type="checkbox"/> Grant Submission | <input type="checkbox"/> Liquor/Bingo License Application | <input type="checkbox"/> Plat |
| <input type="checkbox"/> Special Event Permit | <input type="checkbox"/> Special/Temp Use Permit | |
| <input type="checkbox"/> Other: Council Rules of Procedure | | |

Council Priority (Check Appropriate Areas):

- | | | |
|--|--|---|
| <input type="checkbox"/> Education | <input type="checkbox"/> Public Fitness | <input type="checkbox"/> Library Services |
| <input type="checkbox"/> Public Safety | <input type="checkbox"/> Community Activities | <input type="checkbox"/> Economic Development |
| <input checked="" type="checkbox"/> Public Works | <input type="checkbox"/> Human Service Needs | <input type="checkbox"/> Parks & Recreation |
| <input type="checkbox"/> Town Elections | <input type="checkbox"/> Community Development | <input type="checkbox"/> Finance |

Regular Agenda Wording: CONSIDERATION of renewing the LICENSE AGREEMENT between the Town of Fountain Hills and Cox Communications.

Staff Recommendation: Approve

Fiscal Impact: No \$ _____

Purpose of Item and Background Information: Staff is recommending renewal of the License Agreement with Cox Communications. The franchise agreement remains unchanged and a five-year extension is recommended. The current agreement expires May 31, 2006. Cox Communications will still have to approve the renewal.

List All Attachments as Follows: Amended Cable Television Ordinance dated April 6, 1995.

Type(s) of Presentation: Verbal

Signatures of Submitting Staff:

Department Head

Budget Review
(if item not budgeted or exceeds budget amount)

Town Manager

TOWN OF FOUNTAIN HILLS

AMENDED CABLE TELEVISION ORDINANCE

April 6, 1995

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CABLE COMMUNICATIONS

SECTION 13-1 TITLE

This chapter shall be entitled the Town of Fountain Hills Cable Communications Chapter.

SECTION 13-2 PURPOSE

It is the purpose of this chapter to provide for the regulation and control of cable television systems operating within the Town of Fountain Hills, Arizona, by the Town Council, in the public interest; to authorize the Town Council to grant one or more non-exclusive licenses to operate cable communications systems; to provide for the use of Town streets, public utility easements, public rights of way and public places by licensee and compensation to the Town for use of same; and to require that the provision of this Chapter be applicable to all licenses granted by the Town Council. It is the further purpose and intent of this chapter to facilitate the provision of high quality cable television service to the citizens of the Town while minimizing disruptions of the public domain for system installation and maintenance.

SECTION 13-3 DEFINITIONS

For purposes of this chapter, the following words, abbreviations, and their derivations shall have the meanings given herein. Words not defined are given the meaning in Section 602 of the Cable Act, 47 U.S.C. Subsection 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "must" or "shall" are mandatory and the word "may" is permissive.

"Access Channel" shall mean one or more channels dedicated in whole or in part for local non-commercial programming which is set aside for educational use or governmental use without a charge by the licensee for channel usage and which is not originated by a cable company; provided that such access programming shall not include (i) the retransmission of local television broadcast signals or (ii) programming produced by persons unaffiliated with the cable company under the provisions of Section 612 of the Cable Act.

"Applicant" means any Person that applies for a License.

"Application" means a proposal to construct and/or operate a cable system within the Town, transfer a license, renew a license, or modify a license. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

"Basic cable service" or "basic service" means any service tier which includes the retransmission of local television broadcast signals.

"Cable Act" means the Cable Communications Policy Act of 1984 (also known as 47 U.S.C. Section 521 et seq.), as amended.

"Cablecasting" means a non-broadcast signal that originates within the facilities of the cable communications system.

"Cable service" means (1) one way transmission to subscribers of (a) video programming, or (b) other programming service, and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

"Cable Television System" or "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Town. Such term does not include (1) Facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (2) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility uses or crosses (above or through) any public right-of-way; (3) a facility of a common carrier that is subject, in whole or part, to the provision of Title II of the Communications Act of 1934, 47 U.S.C. Subsection 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facility of any electric utility used solely for operating its electric utility systems. Furthermore, if there is a connection of any such exempt system to a licensed system such exemption shall cease.

"Change of Service" means all requests by existing Subscribers for modification to their Cable Service, such as additions or deletions of premiums services, additional outlets, remote controls FM service, etc. Such terms shall not include, initial installation of Basic Cable Service, total disconnection of Basic Cable Service or Service Calls.

"Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and is capable of delivering a television channel.

"Complaint" is a subscriber or citizen issue, presented in verbal or written form, to the licensee or the Town; relating to any aspect of the licensee's performance under this chapter.

"Control of Licensee or Applicant" means the legal or practical ability to direct the affairs of the licensee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest. In the case of a limited partnership, a change in limited partner interests shall not constitute a change in control where the limited partners have no power to participate in the management of the partnership, and the general partner retains full power.

"Converter" is an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television set.

"Council" means the Town Council of the Town of Fountain Hills, Arizona, or such representative person or entity as may be designated initially or at some future date to act on cable television matters.

"Density" means the number of potential subscriber households per mile of cable system. Dwelling units shall be counted when they are within 250 feet of any portion of the cable distribution system including trunk and feeder cable lines.

"Dwelling Unit" means any separate and distinct structure or part thereof which exists in finished form, occupied or capable of year-round occupation, and serves as a residence to one or more persons. Included in this definition, but not limited to are: all single family homes, each apartment unit, each condominium unit, patio homes, guest quarters, and similar type structures.

"FCC" means the Federal Communications Commission or successor agency.

"Gross Revenues" shall mean all cash, credits, property of any kind or nature, or other consideration, less related bad debts up to a maximum of one and one-half percent (1-1/2%) annually of such cash, credits and property, received directly or indirectly by a licensee, its affiliates, subsidiaries, parent and any person, firm or corporation in which a licensee has a financial interest or which has a financial interest in a licensee, arising from or attributable to the licensee's operation of its cable television system within the Town, including, but not limited to:

- (a) Revenue from all charges for services provided to subscribers;

(b) Revenue for all charges for the insertion of commercial advertising upon the cable system;

(c) Revenue from all charges for the leased use of studios;

(d) Revenue from all charges for the installation, removal, connection and reinstatement of equipment necessary for a subscriber to receive cable service;

(e) Revenue from the sale, exchange, use or cablecast of any programming developed for community use or institutional users.

(f) Revenue from all charges for the use of or lease of leased access channels or band width.

(g) Revenue from the production or transmission over the Cable System of video programming by licensee including programming produced by its mobile facilities.

(h) Any other income derived from the Cable System.

Gross Revenues shall not include taxes collected by licensee on behalf of any governmental authority; any surcharges for underground conversion of cable plant costs; any increase in the value of any stock, security or asset; the value of complimentary services provided to Licensee's employees and is required by the Ordinance or any License; and dividends or other distributions made in respect of any stock or securities, or value received by a licensee or any of its affiliates, subsidiaries or parent relating to Licensee services or through cooperative advertising.

"Gross Revenues" shall not include cash, credit, property of any kind or nature or other consideration received by a licensee's affiliates, subsidiaries, parent, or any person, firm or corporation ("Affiliate") in which a licensee has a financial interest or which has financial interest in a licensee for any sales of advertising on the cable system, services to provide programming on the cable system, production services, and/or telecommunication services which are Cable Services when such services are provided by an Affiliate, which has all the following characteristics: the Affiliate is a separate legal entity, with separate employees, with separate financial records (which may be part of consolidated financial reporting records), and a separate mission; it makes payments to licensee which meet market standards for the services and industries involved, even if it does not offer and provide its services to persons other than licensee in the same industry as licensee; and it was established for valid business purposes and not with the intent and purpose of circumventing payment of license fees on Gross Revenues. Nothing contained in this exclusion from Gross

Revenues shall be interpreted to exclude from Gross Revenues such cash, credit, property of any kind or nature or other consideration which would be considered the licensee's Gross Revenues derived from the operation of the cable system under the Cable Act. Except for Gross Revenue from such sales of advertising on the cable system, services to provide programming on the cable system, production services, or telecommunication services which are Cable Services received by such Affiliate, this paragraph shall not exclude from Gross Revenues any source of Gross Revenues which an existing licensee itself is receiving at the time it is granted a license under this chapter, as revised April 6, 1995.

When a licensee (or an Affiliate) holds one or more other cable television licenses in Maricopa County, Arizona and receives and allocates Gross Revenues from (b), (f) and (g), then Gross Revenues derived from (b), (f), and (g), shall be allocated pro rata to the Town based on the ratio of the number of Subscribers of licensee (or an Affiliate), in the Town to the number of Subscribers of licensee (or an Affiliate) in all the jurisdictions in Maricopa County, Arizona, in which licensee (or an Affiliate) holds a cable license. If a licensee does not allocate its Gross Revenues derived from (b), (f) and (g) from such other jurisdiction(s) then the number of Subscribers in such jurisdiction(s) shall not be included in the total number of Subscribers in all other jurisdictions.

"Interconnect" or "Interconnect of Facilities" is the connection of one or more channels of licensee's system with other cable systems by direct cable, microwave link, satellite or other appropriate methods.

"Leased Channel" or "Leased Access Channel" means any channel designated in accordance with Section 612 of the Cable Act, 47 U.S.C. Subsection 532, for commercial use by persons unaffiliated with the licensee.

"License" means the non-exclusive right and authority, granted by the Town Council, as described in this chapter, to construct, maintain and operate a cable television system through use of the public streets or public places in the Town. This term does not include any license or permit that may be required by the chapter or other laws, ordinances or regulations of the Town Council for the privilege of transacting and carrying on a business within the Town or for disturbing the surface of any street or public thoroughfare.

"Licensee" means the Person granted a license agreement by the Town Council and any lawful successor, transferee, or assignee of said Person.

"License Agreement" means a contract entered into in accordance with the provisions of this chapter between the Town Council and a licensee that

sets forth the terms and conditions under which the license will be exercised.

"Malfunction" means an equipment or facility failure that results in the loss of a viewable signal on one or more channels. A "major malfunction" has occurred when five (5) or more channels are affected.

"Outage" means an equipment or facility failure that results in a total loss of signal on all cable channels affecting three (3) or more subscribers in a quarter section within any 120-minute period.

"Overbuild" means a cable system constructed to serve subscribers currently served by an existing cable system, including those parts of an existing system that will be constructed within six (6) months pursuant to plans filed with the Town Council.

"PEG Access channel" or "PEG Channel" means any channel set aside for Educational use or Governmental use without a charge by the licensee for channel usage.

"Person" means any individual, corporation, joint venture, association, syndicate, trust, partnership or any other business entity who holds or applies for a license from the Town Council.

"Property of Licensee" means all property owned, installed, or used within the Town by a Licensee in the conduct of a Cable Television System business.

"School" means any public educational institution, which are accredited by nationally recognized institution, including primary and secondary schools, colleges and universities.

"Service Call" shall result when service problems occur relating to 1) Fewer than (3) complaints regarding total loss of signal on all channels within the same quarter (¼) section within One Hundred Twenty (120) minutes. 2) A degraded signal or picture on one or more channels, or 3) Property damage by Licensee employees or authorized contractors.

"Standard Drop" means that Cable connection which requires no more than two hundred fifty (250) foot drop measured from the nearest point of Subscribers home or place of business to the nearest active tap on the cable system, involving only one outlet and standard materials, and does not involve a wallfish. In addition, a Standard Drop shall exclude custom installation work including specific Subscriber requested work that requires nonstandard inventory or cable routing that requires construction methods exceeding reasonable underground or aerial work.

"Street" means the surface, the air space above the surface and the area below the surface of any public street, road, highway, path, sidewalk, alley, court, easement or other public right of way or public place now or hereafter held by the Town, County of Maricopa, or State of Arizona for the purpose of public travel or public utilities.

"Subscriber" means any individual or entity legally receiving, for any purpose, cable services of the Licensee's Cable Television system including, but not limited to, the basic service, redistribution of television broadcast signals, radio signals, Licensee's original cablecasting, community programming, government and education access channels; and other services such as leased channels, data and facsimile distribution, premium and pay per view channels, and police, fire and similar public service communication.

"Town" means the Town of Fountain Hills, a municipal corporation of the State of Arizona, in its present boundaries, and its future boundaries as increased or decreased by law.

"Town Manager" means the Town Manager of Fountain Hills, Arizona, or his designee, as will be communicated to the licensee in writing, if and when such designation occurs.

"Two-way capability" means the incorporation in a cable system of all appropriate design and engineering characteristics so that two-way transmission, including addressability, over the system can be implemented with a minimum of expense.

SECTION 13-4 AUTHORITY TO GRANT LICENSE, LICENSE REQUIRED, NON-EXCLUSIVE LICENSE

- A. Pursuant to Arizona Revised Statutes Section 9-505, as amended, the Town Council has the authority to issue non-exclusive licenses to construct, install, maintain and operate cable communication systems within the Town, and to regulate those cable operations. The Town Council's authority is also based in common law pursuant to the Town's ownership of the fee simple title to the streets of the Town as well as its legal interest in easements and licenses granted to it by property owners for the purposes of Municipal use.
- B. No provision of this chapter shall be deemed or construed to require the granting of a license.
- C. No person shall construct, install, or maintain a cable system within any street in the Town, or within any other public property of the Town, unless

a license agreement authorizing such use of said streets or property is in full force and effect.

- D. Any person providing or maintaining a cable system in the Town pursuant to a license granted by Maricopa County, Arizona, prior to the incorporation of the Town, may continue to provide and/or maintain such system until such time as the Town has granted its first license. If the person providing or maintaining a system does not receive (one of) the first Town license(s), then the person shall have 120 days from the effective date of the first license(s) to provide for the abandonment or removal of the system.
- E. Any license issued by the Town Council shall be non-exclusive, and the Town Council specifically reserves the right to grant such additional licenses for cable systems as the Town Council deems appropriate.

SECTION 13-5 APPLICATION PROCEDURES

- A. Any person desiring to construct, install, maintain or operate a cable communication system within the Town shall submit an application to the Town Council. This application shall consist of executed application forms as prescribed and furnished by the Town. Failure of any applicant to fully provide all information requested on the application forms will be sufficient cause for not considering the application. This application shall be filed with the Town Clerk.
- B. All applications filed with the Town Clerk remain the property of the Town. Applications for a license may be submitted only in response to a request for proposals (RFP) issued by the Town Council in compliance with the provisions of this Chapter. Applications submitted pursuant to a request for proposals may be returned as non-responsive if they do not comply with all requirements of the request. The Town Council reserves the right to issue a request for proposals at any time.
- C. Applications for consent to transfer a license or an interest in a license must conform to the requirements of Sections 9 and 12 of this chapter, while applications for renewal must conform to Sections 9 and 11.
- D. An application for modification of a license agreement must conform to Section 9 of this chapter, and include, at a minimum, the following information:
 - 1. The specific modification requested;
 - 2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved;

3. A statement as to whether the modification sought is pursuant to 47 U.S.C. Section 545, and, if so, a demonstration that the requested modification meets the legal standards of said Section; and
 4. Any other information necessary for the Town Council to make a determination.
- E. To be acceptable for filing, an application must be submitted with any required filing fee, be properly executed on the forms prescribed by the Town Council, and contain the information required by any required application form, this chapter, and meet the requirements of any applicable request for proposals.

SECTION 13-6 STANDARDS FOR GRANTING OR DENYING LICENSE APPLICATIONS

- A. All applications received that are acceptable for filing shall be placed in a public file with the Town Clerk. The Town Council shall publish notice of each application in a newspaper of general circulation within the proposed service area once a week for two (2) consecutive weeks. The notice shall indicate the following:
1. The proposed service, or changes in service, and/or;
 2. Proposed changes in ownership; and
 3. Where the application may be viewed; and
 4. The due date for submission of any written comments; and
 5. The date and location of a public hearing on the proposed application.
- B. Notice of such hearing shall be published and held in accordance with the provision of Arizona Revised Statutes Section 9-507.B. All interested parties shall be afforded a reasonable opportunity to be heard.
- C. The Town Council shall give full consideration to each application. The following factors may be deemed appropriate and shall be considered:
1. The financial qualifications of the applicant and its ability to construct and operate the proposed system.
 2. The need for and quality of the service proposed, including rates to subscribers, whether or not rates are to be regulated.

3. The technical, legal, and character qualifications of the applicant, including applicant's willingness to abide by the limitations of this chapter.
 4. Technical and performance adequacy of the proposed system design, plant and equipment, including any specific knowledge or experience the Town Council may have with the applicant.
 5. Where an applicant proposes to overbuild an existing cable system, the economic and technical feasibility of multiple cable systems, the impact on the existing licensee's system and the public interest, if the application were to be granted.
 6. All other factors which may affect the public interest.
- D. Thereafter, the Town Council shall make a determination whether to approve or disapprove each application.

SECTION 13-7 LICENSE AGREEMENT

- A. Upon the approval of an application by the Town Council, the applicant shall negotiate and execute a license agreement within sixty (60) days. If the Town Council and the grantee fail to agree on the terms of a license agreement within the 60 days of the date that the Council's action approving the application, the approval shall expire without further action by the Town Council. This time limit may be extended by the Town Council for good cause. The license agreement shall incorporate all terms and provisions of this chapter wherein a requirement is placed upon the licensee, either expressed or implied by this chapter. The licensee shall expressly and specifically agree to accept the terms of and be bound by the terms of this chapter.
- B. A license agreement shall have the following characteristics:
1. It authorizes use of the public rights-of-way for installing cables, wires, lines, and other facilities to operate a cable system, but does not expressly or implicitly authorize the licensee to provide service to, or install cable, wires, lines, or any other equipment or facilities upon property without owner consent [except for compatible easements or rights-of-way pursuant to 47 U.S.C. Section 541(a)(2)], or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners. It also authorizes the licensee so to use, operate, and provide similar facilities or properties rented, licensed, or leased from other persons, firms or corporations, including but not limited to any public utility or other licensee licensed or permitted to do business in the Town; provided, however,

that neither the licensee nor the third party shall be relieved of any regulation or obligations as to its use of such facilities in the streets.

2. It is subject to the paramount right of use of the public rights-of-way by the Town Council and the public for public purposes. The Town Council reserves the right to authorize use of public rights-of-way to other persons as it determines appropriate.
3. It is nonexclusive, and will not expressly or implicitly preclude the issuance of other licenses to operate cable systems within the Town.
4. It conveys no property right to the licensee or right to renewal other than as may be required by state or federal law.
5. It constitutes a contract between the licensee and the Town Council once it is approved by the Council and executed by both parties. A licensee contractually commits itself to comply with the terms, conditions and provisions of the license agreement and with all applicable laws, ordinances, codes, rules, regulations, and orders.
6. The term of the license agreement shall not exceed fifteen (15) years commencing on its effective date.
7. A Licensee shall execute a hold harmless agreement as part of the License Agreement which shall set forth the obligation of the Licensee over and above the insurance requirements contained in the license and this Code.
8. A licensee shall be subject to all laws, rules, and regulations of the State of Arizona and the United States Government.
9. Any of the provisions of this chapter may be amended by the Council at any time. This chapter and such amended provisions shall be applicable to all existing license agreements; provided, however, that this chapter and such amended provisions shall not be applicable to an existing agreement where it would contravene a contractual right of the licensee under the license agreement, nor pose additional contractual burdens on the licensee.
10. All notices and communications from a licensee to the Town Council pursuant to this chapter or a license agreement shall be sent to the Town Manager unless the licensee is otherwise directed.
11. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the license agreement shall grant the right and privilege to the licensee to provide non-cable

communications services. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the Town Council shall retain all authority to regulate non-cable telecommunication services to the extent necessary to protect the public interest and to ensure compliance with all provisions of this chapter.

SECTION 13-8 OPERATING REQUIREMENTS FOR CABLE COMMUNICATIONS SYSTEMS

A licensee shall conform to the following minimum standards relative to the construction, operation and maintenance of a cable communications system in the Town. It is not the intent of this section to prevent any licensee from providing more than the required minimum to meet the standards listed below.

A. Rights of Individuals, Subscribers and Users.

1. A cable system shall be operated in a manner consistent with the principles of fairness and equal accessibility of facilities, channels, studios, and other services to all residents and other entities having a legitimate use of the system. A licensee shall not discriminate in terms of rates, terms of service, or extension of service on the basis of age, race, creed, sex, religion, national origin or marital status. Nor shall a licensee fail to extend service to any part of the Town on the basis of the income of the residents.
2. A licensee shall maintain a business office open during normal business hours with listed local or toll-free telephone numbers to allow reasonable access by subscribers and members of the public. Unless a waiver is granted by the Town Council, said office shall be located within ten (10) miles of the Town's corporate limits. When the office is closed, an answering machine or similar device, capable of receiving service complaints and inquiries must be employed.
3. Licensee shall maintain a written record listing date of all complaints, identifying the subscriber or citizen, describing the nature of the complaint and when and what action has been taken by the licensee, if any, in response thereto; such record shall be kept at licensee's office and shall be available for inspection during regular business hours without further notice of demand of the Town Manager. A summary of such records must be retained for not less than one (1) year. The licensee shall notify each subscriber at the time of initial subscription to service of the procedure to reporting and resolving complaints.

4. A licensee shall establish procedures for the investigation and resolution of all complaints, including but not limited to, those regarding the quality of service and equipment malfunction. A copy of such procedures shall be provided to the Town Council upon request.
5. A licensee must provide each subscriber at the time cable service is installed, the following:
 - (a) written instructions for placing a service call, filing a complaint, or requesting an adjustment, including the phone number and address of licensee's office;
 - (b) the telephone number of the Town office responsible for administration of cable license;
 - (c) a schedule of rates and charges for all available services;
 - (d) copies of the service contract, including disconnect and reconnect procedures and charges;
 - (e) a subscriber handbook and upon request any other written policies applicable to subscribers.
6. A licensee shall establish and conform to the following policy regarding refunds to subscribers and users:
 - (a) If the licensee collects a deposit or advance charge on any service or equipment requested by a subscriber or user, the licensee shall provide such service or equipment within thirty (30) days of the collection of the deposit or charge or it shall refund such deposit or charge within five (5) days thereafter upon request of the subscriber. The subscriber must be advised of this right of refund at the time the order is placed.
 - (b) If any subscriber or user terminates any monthly service during a period of time for which said subscriber or user has made an annual or other payment in advance, the appropriate pro rata portion of said payment shall be refunded by the licensee.
7. The following requirements shall apply to disconnections:
 - (a) there shall be no charge for total disconnection of cable service unless such charge was disclosed at the time the subscriber ordered service. All cable communications equipment shall be removed within a reasonable time from a subscriber's property at the

subscriber's request, such time not to exceed thirty (30) days from the date of the request.

(b) If any subscriber fails to pay a properly due monthly subscriber's fee or other charge, the licensee may disconnect the subscriber's service outlet; provided, however, that such disconnection shall not be effected until thirty (30) days after the due date of the charges and shall include a prior written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper charges or fees, including the payment of any reconnection charge, the licensee shall promptly reinstate the service.

8. A licensee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to subscribers and the Town Council of anticipated interruption. No prior notice shall be required for the performance of system maintenance work requiring a maximum of one (1) hour between the hours of six (6) a.m. and twelve (12) midnight, and four (4) hours between the hours of twelve (12) midnight and six (6) a.m.
9. A licensee shall at all times comply with the subscriber privacy provisions of 47 U.S.C. Section 551.
10. No equipment shall be installed by the licensee for subscriber service without first securing a service request from the owner or resident of any private property involved, except in public utility easements.
11. A licensee shall not originate or knowingly permit subliminal transmission at any time for any purpose whatsoever.
12. A licensee shall provide leased access channels as required under 47 U.S.C. Section 532. In the event that said federal provisions should cease to apply, the Town Council reserves the right to promulgate other leased access requirements which shall apply, not to exceed those requirements specified in 47 U.S.C. Section 532.
13. A licensee shall strictly adhere to the equal employment opportunity requirements of the FCC, 47 U.S.C. Section 554, state statutes and local regulations, and as the same may be amended from time to time.

B. Cable System Construction Timetable.

1. A cable system shall be constructed in accordance with the provision of the license agreement.
2. It is the policy of the Town Council to require construction of a cable system designed to serve subscribers in an area licensed by the Town Council as rapidly and expeditiously as possible. The licensee shall immediately upon granting of the license agreement diligently pursue and obtain all necessary permits from the appropriate governmental agencies, utility companies, and others as necessary to comply with the provision of this chapter and other federal, state and Town laws, codes and resolutions. However, no construction shall begin until the notification requirements set forth elsewhere in this chapter are satisfied.
3. A cable system shall be constructed pursuant to a construction timetable specified in the license agreement.
4. Any delay beyond the terms of the timetable specified in the license agreement will be considered a violation of the terms of this chapter and the license agreement. Unless the licensee can establish that the delay was due to factors beyond its control, the licensee may be considered in default of the license agreement and the Town Manager may take whatever action the Town Manager is entitled to under this chapter and the license agreement.
5. The licensee shall not be considered in default of the applicable construction schedule if the Town Council approves a modification of the schedule change in advance. In submitting a request for a construction schedule modification, the licensee must fully explain the reasons for the delay, in writing. The delay must be disapproved by the Town Council if it is not reasonably justified, would have unreasonably discriminating results, or would unduly delay service to an area. Such a modification request shall be considered granted unless the licensee is notified by the Town Council to the contrary in writing within forty-five (45) days of the date on which the request was filed.
6. The Town Council may require a licensee to report on construction progress and provide information showing specifically whether the construction schedule is being met and the reasons for the delay. The Town Manager shall determine the format to be used for the report and the frequency of reporting.

7. Where appropriate and reasonable, a licensee shall schedule construction activities to coordinate with any Town construction on streets so as to avoid unnecessary inconvenience to the public.

C. Line Extension Policy.

Unless the license agreement provides otherwise, a licensee shall be required to extend its cable system pursuant to the following requirements.

1. Upon reasonable request for service by any person located within any area of the Town that meets density requirements of C.2. below, the licensee shall, within sixty (60) days, furnish the requested service to such person, unless prevented from providing said service due to factors outside licensee's control, such as permit restrictions, private easement considerations, etc. If such service has not been implemented within ninety (90) days of said request, the Town Council may impose liquidated damages for each day thereafter.
2. The licensee must extend and make cable television service available to every unserved dwelling unit within any area of the Town reaching the minimum density of at least twenty-five (25) dwelling units per mile of plant as measured from licensee's nearest activated trunk or feeder line, whether the existing plant is aerial or underground, except that the licensee shall not be required to install cable where another authorized licensee has already done so. Licensee shall complete line extensions to an area reaching a density of at least five (5) homes within 1,056 feet of existing active cable plant, or where an area has more than five (5) homes, at least one home per 211 street feet including the distance to existing active cable plant. Upon request, this density requirement may be modified by the Town Council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable if licensee's compliance with said requirement would create a significant adverse impact on the capital costs of licensee's Fountain Hills cable system.
3. The licensee shall prevent unnecessary damage to streets and property by installing cables or conduits underground in new single family subdivisions at the same time and in the same trench as telephone, electric or similar services are installed. Given reasonable notice, the licensee shall install underground cable or conduit in all new subdivisions of five or more dwelling units within the service area at the same time and in the same trench as telephone, electric or similar services are installed. Cable need not be installed and/or activated until the new subdivision meets the criteria established for line extensions.

4. The licensee must extend and make cable television service available to any resident requesting connection within the licensee's authorized service area at the regular installation charge if the connection to the resident would require no more than a one hundred fifty (150) foot drop line, and provided C.2. above is met.
5. With respect to requests for connection requiring a drop line in excess of one hundred fifty (150) feet, the licensee must extend service to such residents at a one time charge not to exceed the actual costs incurred by the licensee for the distance exceeding 150 feet.

D. Construction and Technical Standards.

The following general requirements, which are not to be interpreted as imposing standards in excess of FCC imposed limits, apply to all licensees.

1. In those areas and portions of the service area where the transmission and distribution facilities of the telephone company and the electric company are underground or later placed underground, the licensee shall likewise install its transmission facilities underground.
2. In areas where facilities do not have to be underground, a licensee shall not erect any new poles along any street or public way of the Town except as may be reasonably required or necessary to fill small gaps in the existing aerial utility systems and only then with the advance approval of the Town Council.
3. All television signals transmitted on a cable system must include any closed captioning information for the hearing impaired. Antennas, supporting structures, and outside plant used in the system must be designed to comply with the recommendations of the Electronics Industries Association and applicable federal and local regulations on tower structures and outside plant.
4. The licensee must perform at its expense any proof of performance tests designed to demonstrate compliance with the requirements of this chapter, the license agreement, and the FCC. The Town Manager may require periodic proof of performance tests to be performed at the expense of the licensee. Upon request, the licensee must provide the test results promptly to the Town Manager.
5. The licensee must advise the Town Manager when a proof of performance test is scheduled so that the Town Manager may have an observer present.

6. A licensee must not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another licensee, or individual or master antennas used for receiving television or other broadcast signals.

E. Maintenance Specifications.

1. The licensee shall construct, install and maintain its cable system in an orderly and workmanlike manner. The safety of the general public, the licensee's employees, the employees of the utility companies and all nearby property owners shall be a primary concern.
2. All cables are to be installed, to the maximum extent possible, parallel with electric and telephone distribution facilities. Multiple-cable configurations shall be arranged in parallel and bundled to the maximum extent possible.
3. As between licensee and the Town, the licensee shall be solely and completely responsible for the actions taken by any contractor or other agent employed to construct or install the licensee's facilities on streets as well as on public or private property.
4. The licensee shall give prior written notice, as set forth later in this section, of its intent to place underground facilities. Failure to provide such notice may subject a licensee to liquidated damages pursuant to section 9 of this chapter, or other enforcement sanctions.
5. In addition, the licensee shall comply with all other Town, state and federal laws and regulations which may be applicable to its operations.
6. A licensee shall have available at all hours personnel capable of responding to emergency conditions requiring immediate repair to any facility owned by the state, county, Town, or the gas, electric, and telephone utilities, as well as pipeline companies or similar industries. The licensee shall respond to normal requests for location of its facilities within forty-eight (48) hours. The licensee shall be a member of the One Call Notification Center, or comply with State Underground Law, for its service area.
7. In the event that licensee property, or the facilities and equipment of unauthorized cable communication providers, has been installed in a street or other dedicated public right-of-way without complying

with the requirements of this chapter, or the license has been terminated, revoked or expired, or the use of any licensee property is discontinued for any reason for a continuous period of three (3) months, licensee or any unauthorized cable communication provider, shall at its sole expense on the demand of the Town Council remove promptly from the street all licensee or unauthorized cable communication provider property other than that which the Town Council may permit to be abandoned in place. Upon such removal of subject property, licensee or unauthorized cable communication provider shall promptly restore the street or other public places from which the subject property was removed to a condition as near as possible to its prior condition. Subject property no longer in service may be left in place with the approval of and in a manner prescribed by the Town Council. Upon abandonment of said property in place, licensee or unauthorized cable communication provider shall deliver to the Town Council an instrument transferring ownership of the subject abandoned property to the Town. Any cost arising from compliance with this provision shall be borne by the licensee or unauthorized cable communication provider.

F. Use of Streets.

1. A licensee must utilize, with the owner's permission, existing poles, conduits or such other facilities whenever possible. Underground street, sidewalk and driveway crossings not using existing conduits shall be bored unless specific Town Council approval is received. A licensee may install its own poles only when approved by the Town Council and subject to whatever reasonable terms the Town Council requires.
2. All transmission lines and other equipment must be installed and located to minimize interference with the rights and reasonable convenience of public and private property owners. The Town Council reserves the right to issue such reasonable rules and regulations concerning the installation and maintenance of cable systems in the public rights-of-way, as may be consistent with this chapter, state and federal law.
3. The licensee shall have at all times up-to-date route maps showing trunk and distribution lines. Licensee shall make all such maps available for review by the appropriate Town personnel.
4. Suitable safety devices and practices as required by Town, state and federal laws, ordinances, regulations and permits must be used during construction and maintenance of a cable system.

5. A licensee must remove, replace or modify at its own expense, any of its facilities within any public right-of-way when required to do so by the Town Manager to allow the Town to change, maintain, repair, improve or eliminate a public thoroughfare. Nothing in this section shall prevent licensee from seeking and obtaining reimbursement from sources other than the Town.
6. On streets where electrical and telephone utility wiring are located underground, either at the time of initial construction or subsequently, the cable must also be located underground at the licensee's expense. Between a street or road and subscriber's residence, the cable must be located underground if both electrical and telephone utility wiring are located underground. If either electric or telephone are aerial, licensee may install aerial cable except where a property owner requests underground installation and agrees to bear the additional cost over aerial installation.
7. A licensee must obtain any required permits before doing any excavation or causing disturbance to public thoroughfares or private property as a result of its construction or operations and must restore to their former condition such private property and public thoroughfares, the latter in a manner consistent with all applicable rules, regulations, resolutions or other Town Manager requirements relative to construction, repair or maintenance in public rights-of-way. If such restoration is not satisfactorily performed within a reasonable time in the opinion of the Town Manager, the Town Manager may, after prior notice to licensee, cause the repairs to be made at the expense of the licensee. The Town Manager may inspect ongoing construction and require a licensee to halt construction where the Town Manager finds the construction to be in non-compliance with the requirements of this chapter, the license agreement, or a permit.
8. Prior to commencement of underground construction a licensee must have complied with the following requirements:
 - (a) Have received a permit from the Town Council for construction on public property or rights-of-way;
 - (b) Have requested and received clearance from utilities in the area of construction;
 - (c) Where new construction will be on private property or in public rights-of-way adjoining private property, have provided no less than seven (7) days written notice by mail or hand delivered to all such property occupants. The notice shall include the name, address and

toll-free phone number that the affected person may call for more information or to lodge a complaint.

9. At the request of any person holding a valid building moving permit and upon sufficient notice, the licensee must temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than 72 hours advance notice. The direct expense of such temporary move must be paid by the permit holder and the licensee may require payment in advance.

G. System Services and Capability.

1. The following minimum requirements for facilities and services apply to licenses. The Town Council may require that a licensee exceed these minimum requirements.
 - (a) Except as provided in the license agreement, a cable system must have a minimum capacity of fifty-four (54) video channels available for immediate or potential use. Two-way capability shall be designed into the system. Upon request, this minimum channel capacity may be modified by the Town Council for a specific licensee, provided said licensee demonstrates that it would be commercially impracticable to comply with said requirement. A licensee shall have the burden of demonstrating, by clear and convincing evidence, that compliance with the minimum channel capacity would be commercially impracticable for its Fountain Hills cable system.
 - (b) Standard installation and basic service to public buildings may be required without charge as set forth in the license agreement. Licensee may be required to make available, one service outlet to a conveniently accessible point in each school, police station, fire station and Town Hall or other facility or building located within the license area and used for public purposes as may be designated by the Town Manager. The installation charge to each occupant, if any, would not exceed licensee's direct cost (time and material). There may also be a minimum monthly service charge at the above locations.
 - (c) A licensee must design its system to allow the Town Council to interrupt audio portions of the cable service in an emergency to deliver information to subscribers.
 - (d) A licensee must provide standby power for the headend so as to be able to operate some channels during a power outage for a minimum of six (6) hours; or as provided for in the license agreement.

2. The Town Council may waive minimum requirements for licenses where the applicant demonstrates that such waiver is in the public interest.
3. The following requirements apply to access and community programming channels:
 - (a) Applications for a license shall include proposals for the provision of educational and governmental access channel sufficient to meet community needs during the term of the license as determined by the Town Council. A licensee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the licensee.
 - (b) All access channel operations must conform to the following minimum requirements:
 - (1) Access channels shall be carried on the licensee's lowest priced service offering.
 - (2) The license may require a licensee or other entity to manage the access channels and to establish reasonable rules for the use of access channels consistent with the requirements of this chapter and the intended purpose of such channels.
 - (3) The use of any educational access channel shall be made available free of charge to schools and other qualified educational institutions for the transmission of local educational programming.
 - (4) The use of any local government access channels shall be made available free of charge to the Town Council for the transmission of government related programming.
 - (5) The licensee shall submit to the Town Council on an annual basis a plan for publicizing access programs and access use.
 - (c) At the request of a licensee the Town Council may promulgate rules under which channel capacity dedicated to access use may be used by the licensee when it is not being used for access purposes.

(d) A license shall include a provision for the licensee to provide channel capacity for community programming on terms and conditions specified in the license agreement.

H. Interconnection.

1. A licensee shall interconnect its cable system with other or all other systems located in the Town, in nearby cities, and/or in the County upon the request of the Town Council, where economically and technically feasible.
2. Upon receiving the request of the Town Council to interconnect, a licensee shall initiate negotiations with the other affected system(s) in order that technical details be resolved and costs may be shared on an equitable basis.

I. Local Broadcast Channels.

Each cable system shall carry as part of the basic service local channels broadcast in its area as required and defined in current FCC regulations. In this regard, those parts of 47 C.F.R. Part 76 relating to carriage of local channel signals as existing, or as may be amended, shall apply and are incorporated herein by reference.

J. Technology Review.

1. The Town and licensee shall meet at periods not exceeding three (3) years or upon request of either to discuss changes in cable television laws, regulations, technology, competing services, the needs of the community and other factors impacting cable television. As a result of these discussions, this license may be modified by the Town and the licensee to respond to the change in laws, regulations, technology, competing services, the needs of the community or other factors impacting cable television.
2. If any of the following conditions occur, and upon written request of either licensee or Town, the Town Manager and licensee agree to meet and discuss in good faith the terms of a mutually agreeable license amendment:
 - (a) Cable Service similar to cable television service offered by licensee is provided by any entity using the Streets and public ways, which is not subject to similar licensing requirements of the Town.

- (b) The Cable Act is amended to allow licensee to provide intrastate or interstate telecommunication and any regional Bell operating company to provide Cable Service.
- (c) Any other significant event occurs, including but not limited to a final non-appealable order or judgement by a court of competent jurisdiction, which either licensee or Town believes may impact the current terms and conditions of the license.

The purpose of the meeting and discussion is to use best efforts to reach mutually acceptable agreement for recommendation to the Town Council for proposed Town Council action within 90 days of such written request, on how to amend the license to relieve Town or the licensee from any commercial impracticability, which arises from the condition in question. This provision shall not require that the license be amended, however it is intended to facilitate a process whereby the parties may reach a mutually acceptable agreement.

SECTION 13-9 FEES, BONDS, LETTERS OF CREDIT, LIQUIDATED DAMAGES AND APPEALS

A. Application Fee.

Each application for a license to be granted under the authority of this chapter shall be accompanied by a non-refundable filing fee in the amount specified below, by certified or cashier's check made payable to the Town. Non-refundable filing fees in the following amounts are required:

- 1. For an initial license or renewal: \$2,500.
- 2. For consent to transfer or change ownership: \$2,000.
- 3. For license modifications:
 - (a) pursuant to 47 U.S.C. Section 545: \$2,500.
 - (b) any other modification: up to \$2,000.

B. License Fee.

- 1. In consideration of the fact the streets of the Town will be used by a licensee in the operation of its cable system within the boundaries of the Town and said streets are valuable properties acquired and maintained by the Town at great expense to its taxpayers, and in consideration of the costs incurred by the Town in regulating and administering each cable license, the licensee shall pay to the Town

administering each cable license, the licensee shall pay to the Town up to 5% of the licensee's gross annual revenue, from all sources attributable to the operations of the licensee within the licensed area.

2. This payment shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year. Each quarterly payment shall be due and payable no later than 30 days after the relevant computation date. Each payment shall be accompanied by a financial report showing in detail the gross revenues of the licensee related to that quarter.
3. Except as provided in subsection B.8, the payment required pursuant to this section shall be in addition to any other tax or payment owed to the Town pursuant to any other applicable ordinance or chapter of the Town code, regulation or law of the County, State or federal government.
4. A license fee not received in full by the Town within thirty (30) days of its due date shall be deemed delinquent and subject to a late fee. The late fee for delinquent payment shall be five percent (5%) of the amount overdue plus interest at the rate of one and one-half percent (1-1/2%) per month, or parts thereof.
5. Where the licensee fee is based on gross revenues, the licensee shall file, with each license payment, a statement of the gross revenues for the period on which the fees are based. Such a licensee must file within three (3) months of the end of its fiscal year a statement of gross revenues for the preceding year, which is either audited or certified as accurate by an officer of the licensee. Any payment of license fees to adjust for a shortfall in the quarterly payments for the preceding year must be made not later than the filing date for the audited annual statement of gross revenues. Adjustments for any overpayment will be credited to subsequent quarterly payments. Interest and late charges (as specified above) will not be imposed for any payment necessary as a result of the yearly adjustment if the payment to correct the shortfall does not exceed ten percent (10%) of the total payments made during the preceding year. IN the event such payment exceeds ten percent, the licensee is liable for interest and late charges for the entire amount due.
6. The Town Manager shall have the right, upon reasonable notice, to inspect or audit during normal business hours a licensee's records showing the gross revenues and other relevant underlying data and information. Upon examination of such information, the Town Manager has the right to recompute any and all amounts paid under a license. Any additional amounts due the Town as a result of an

audit shall be paid by the licensee within thirty (30) days following written notice to the licensee by the Town Council, which shall include a copy of the inspection or audit report. In the event that an inspection or audit results in additional monies owed the Town in excess of five percent (5%) of the total paid, the licensee shall bear the total cost of the audit, and late charges and interest on the additional amount due.

7. No acceptance by the Town Council of any payment shall be construed as an accord that the amount paid is in fact the correct amount nor shall such acceptance of payment be construed as a release of any claim the Town Council may have.
8. There shall be allowed as an offset against the license fee due under this section any amounts licensee paid to the Town during the prior quarter in privilege license (sales) taxes; provided, however, that there shall be no offset to the extent that licensee made payments of privilege license (sales) taxes on any gross income (within the meaning of the privilege license [sales] tax ordinance) which is not included in gross revenues under this chapter. The license shall provide for suitable procedures and methods for audit of this offset.

C. Performance Bond.

1. Within thirty days after the execution of the license agreement and prior to any construction work in the public right-of-way, the licensee shall file with the Town Manager a performance bond, or a letter of credit in a form acceptable to the Town Attorney, in the Town's favor in the amount of fifty thousand dollars (\$50,000), or as specified in the license agreement. In the event that licensee fails to comply with any provision of this chapter or the license agreement, then there shall be recoverable jointly and severally from the principal and surety any and all damages or costs suffered by the Town. These damages or costs shall include but not be limited to attorney's fees, cost of any action or proceeding and including the full amount of any compensation indemnification, cost of removal or abandonment of any property or other costs due and owing the Town up to the full amount of such bond.
2. At such time as 95% of planned construction in the Town is complete, as specified in license agreement, the Town Council may, at licensee's request, reduce or eliminate the performance bond requirement.

3. The bond shall be issued by a surety company authorized to do business in the State of Arizona and shall be in a form approved by the Town Attorney, and contain the following endorsement:

"This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town Council, by certified mail, return receipt requested, or a written notice from the issuer of the bond of intent to cancel or not to renew."

4. The rights reserved by the Town Council with respect to the bonds required are in addition to all other rights and remedies the Town Council may have under this chapter, the license agreement or any other law.

D. Irrevocable Letter of Credit.

1. Within thirty (30) days after written notification of the award of license by the Town Council, the selected applicant shall provide the Town Manager a letter of credit from a financial institution licensed to do business in Arizona in the amount of ten thousand dollars (\$10,000), or as specified in the license agreement, as security for the faithful performance by licensee of all provisions of this chapter and compliance with all orders, permits and directions of any department of the Town.
2. The form and content of such letter shall be approved by the Town Attorney, and contain the following endorsement:

"This letter of credit may not be canceled or allowed to lapse until thirty (30) days after receipt by the Town Manager, by certified mail, return receipt request, of a written notice from the issuer of the letter of credit of its intent to cancel or not to renew."

In the event the letter of credit is insufficient to pay the Town for any compensation, damages, penalties, costs or expenses owed it pursuant to this chapter or the license agreement, the licensee's performance bond may be drawn upon by the Town Manager for any amount due the Town over and above the amount of the letter of credit.

3. Within fifteen days after written notice to licensee by the Town Manager that the Town Manager has withdrawn any amount from the letter of credit, licensee shall deposit or pay to the Town Manager a sum of money sufficient to restore such letter of credit to the

original amount of ten thousand dollars (\$10,000), or as specified in the agreement.

4. If a licensee fails to pay the Town: (1) any compensation within the time fixed by this chapter or the license agreement; (2) any taxes due; or (3) any damages, costs or expenses which the Town incurs by reason of any act or default of the licensee; or if the licensee fails to comply with any provision of the license agreement which failure the Town Manager determines can be remedied or partially cured by demand on the letter of credit, the Town Manager may, following ten (10) days notice to the licensee, withdraw from the letter of credit the amount so claimed by the Town Manager if within such period the licensee has not remedied the matter. The Town Manager shall immediately notify licensee of any such withdrawal, the date and amount.
5. The rights reserved to the Town Manager with respect to the letter of credit are in addition to all other rights it may have under this chapter, the license agreement and any other law.
6. Failure to maintain the letter of credit as required shall constitute a violation of the provisions of this chapter.

E. Liquidated Damages.

All license agreements shall contain provisions for liquidated damages, in amounts as mutually agreed upon between the Town Manager and the licensee, for the licensee's failure to comply with various requirements of this chapter and the license agreement as specified below. All references to notices throughout this subsection E shall be by certified or registered mail, return receipt requested.

1. For failure to substantially complete construction or line extensions as required, unless the Town Council specifically approves a delay caused by the occurrence of conditions beyond the licensee's control, the licensee shall pay Five Hundred Dollars (\$500) per day for each day, or part thereof, the deficiency continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.
2. For material failure to provide data, documents, reports and information in a timely manner as required, the licensee shall pay One Hundred Dollars (\$100) per day, or part thereof, that each violation occurs or continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.

3. For material failure to test, analyze and report on the performance of the system following a request from the Town Manager to do so, the licensee shall pay One Hundred Dollars (\$100) per day for each day, or part thereof, that such noncompliance continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.
4. Failure to substantially comply with the material provisions of Section 13-8 of this chapter, the licensee shall pay One Thousand Dollars (\$1,000) per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.
5. For substantial failure to remedy any other violation of the chapter or the license agreement within seven (7) days of receipt of notice of each violation, the licensee shall pay Three Hundred Dollars (\$300) per day for each day, or part thereof, that the violation continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.
6. For failure to substantially comply with reasonable orders of the Town Manager, the licensee shall pay Fifty Dollars (\$50) per day for each day, or part thereof, that noncompliance continues after licensee has been given notice of such deficiency and seven (7) days within which to cure it pursuant to E.8 below.
7. Liquidated damages will not be imposed by the Town Manager if the Town Manager finds that the failure of the licensee resulted from conditions beyond the licensee's control. Liquidated damages may be reduced or eliminated by the Town Manager if the Town Manager finds that the failure of the licensee resulted from excusable neglect. The licensee shall bear the burden of proof in establishing the existence of such conditions.
8. Prior to assessing any of the liquidated damages set forth in this section, the Town Manager shall give licensee seven (7) days written notice of its intention to assess such damages. In said notice(s), the Town Manager shall set forth, at a minimum, the following:
 - (a) amount to be assessed;
 - (b) factual basis for such assessment; and
 - (c) specific license provision alleged to have been violated.

Following receipt of notice set forth in this section, licensee shall have a seven (7) day period during which time licensee and the Town Manager shall make reasonable efforts to resolve the dispute in question. Collection of liquidated damages by the Town for any breach shall constitute the Town's exclusive remedy for the period for which liquidated damages were collected.

9. The imposition and collection of liquidated damages as set forth above shall not prevent the Town Manager from pursuing other remedies for other violations of either the article or the license agreement for which liquidated damages have not been imposed and collected.

F. Appeals.

1. In the event that Licensee contests the Town Manager's assessment of liquidated damages, or fails to respond to the above mentioned notices, within 14 days the Town Manager shall convene an administrative hearing as specified in F.1(a) below. Licensee may pay the fine, proceed with this hearing, or waive its rights to this administrative hearing and proceed directly to the public hearing before the Town Council, as specified in F.1(b) below.

(a) This shall be an administrative hearing, and Licensee shall be afforded procedural due process, including, an opportunity to be heard and to present evidence. Within 14 days after the conclusion of such administrative hearing, the Town Manager shall issue a determination. In that determination the Town Manager may:

(1) find that Licensee is not in violation of this chapter or the license agreement;

(2) find that Licensee is in violation of this chapter or the license agreement, but that violation was with just cause and wive any penalty that might otherwise be imposed;

(3) find that Licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit and/or performance bond provided for elsewhere in this chapter;

(4) find that Licensee is in material violation of this chapter and the license agreement and recommend the Town Council declare the Licensee in violation and terminate the License agreement, provided the Town Council may take such action only after a public hearing as set forth in F.1(b).

(b) If a public hearing before the Town Council is requested by Licensee or is held pursuant to F.1(a)(4), it shall be de novo and it shall convene within 30 days of the request thereof. Licensee shall be afforded full due procedural process, including without limitation, an opportunity to be heard and to present evidence. The Town Council's decision, which shall include findings of fact and conclusions shall be made not later than thirty (30) days after the conclusion of the hearing. In that decision, The Town Council may:

- (1) find that Licensee is not in violation of this chapter or the license agreement;
- (2) find that Licensee is in violation of this chapter or the license agreement, but that violation was with just cause and waive any penalty that might otherwise be imposed;
- (3) find that Licensee is in violation of this chapter or of the license agreement, take corrective action and foreclose on all or any appropriate part of the letter of credit and/or performance bond provided for elsewhere in this chapter;
- (4) find that Licensee is in material violation of this chapter and the license agreement and declare the Licensee in violation and revoke the License agreement pursuant to Section 13-10.

SECTION 13-10 TERMINATION - REVOCATION

A. Termination.

The license shall terminate, upon the expiration of the term thereof, unless renewal is successfully applied for, per Section 13-11.

B. Revocation.

1. If a licensee is in material violation of this chapter or in default of the terms of its license agreement, the Town Manager may make written demand that the licensee come into compliance with said requirements within a reasonable period of time, as specified in Section 13-9. If the licensee is unwilling or unable to do so, the Town Manager may recommend the revocation, alteration or suspension of the license to the Town Council, specifying the reasons for such action.
2. A copy of any such recommendations shall be served by certified or registered mail, return receipt requested upon the licensee, and the licensee shall be given at least fourteen (14) days notice prior to the

date of a public hearing before the Council to consider such action, and the licensee will be given an opportunity to present evidence and made argument at such meeting.

3. The Council shall consider the recommendations, the response of the licensee, and hear from any other interested persons, and shall determine whether or not the licensee is in violation or default of its obligations and, if so, whether such failure was with just cause.
4. If the Council finds that the failure by the licensee was with just cause, the Council shall direct the licensee to comply within such time and manner and upon such terms and conditions as are reasonable.
5. If the Council determines that the licensee's failure was without just cause, the Council may declare the license revoked, altered or suspended. The Council may provide a specified period of time for the licensee to come into compliance before the revocation takes effect.
6. A license may be revoked, altered or suspended by the Town Council on the following grounds, among others, and taking into account any ameliorating circumstances:
 - (a) Fails to comply with any material provision of this chapter or the license agreement.
 - (b) Makes willful false or misleading statements in any application.
 - (c) Engages in the practice of any fraud or deceit upon the Town or subscribers.
 - (d) Fails to abide by the privacy provision of this chapter.
 - (e) Fails to make timely payment of any monies due the Town pursuant to this chapter.
 - (f) Unless otherwise provided in the license agreement, fails to commence construction in the license area within three months and to commence basic service within six months from the effective date of the license agreement.
 - (g) Fails to file and maintain the bonds, insurance, records, failure to pay license fees or assessed property taxes.

(h) For repeated material failure to maintain service quality under the standards prescribed.

(i) Fails to restore service after forty-eight (48) hours consecutive hours after notice to the licensee or interrupted service to the entire system, except when such interruption is beyond the control of the licensee.

C. System Disposal.

In the event of termination or revocation of a license, the licensee involved shall offer to sell the cable system, at the fair market value, to a new licensee or applicant for a license. The fair market value shall be determined in accordance with generally accepted appraisal procedures. The original cost of all tangible and intangible property, as well as salvage value, book value, replacement cost, cash flow and other factors will be considered. Under no circumstances shall any valuation be made for any right or privilege granted by license. Should the licensee fail to negotiate a sale, as described above, the Town may purchase the system at the fair market value for the purpose of leasing to a qualified operator until a buyer can be found, pursuant to the provisions of A.R.S. 9-509.

D. Continuity of Service.

Licensee shall provide continuous service for the entire term of the license agreement to all subscribers and users in return for payment of the established rates, fees and charges. If licensee seeks to sell or transfer, or if the Town revokes or fails to renew the license, licensee shall continue to operate the system as trustee for its successor in interest until an orderly and lawful change of operation is effected. This period of operation shall not exceed one hundred-twenty (120) days from the occurrence of any of the above events. Revenues accrued during that period of time shall be received by the operator. During such time, the cable system shall be operated under terms and conditions consistent with the most recent license agreement, and this chapter.

SECTION 13-11 RENEWAL

- A. If a licensee decides to initiate a formal license renewal process in accordance with 47 U.S.C. Section 546, is must notify the Town Council within 30-36 months prior to the license expiration date.

- B. In considering a renewal application, the Town Council must consider whether:
1. The licensee has substantially complied with the material terms of the existing license and applicable law;
 2. The quality of licensee's service, including signal quality, customer service complaint resolutions, billing practices (without regard to mix, quality, or level of cable services) has been reasonable in light of community needs;
 3. The licensee has the financial, legal and technical ability to provide services, facilities and equipment set forth in its renewal proposal; and
 4. The licensee renewal proposal is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- C. If the Town Council's assessment is that the license should not be renewed, the Town Council may commence an administrative hearing in accordance with 47 U.S.C. Section 546.
- D. The provisions of 47 U.S.C. Section (a) - (g) notwithstanding, a licensee may submit an application for renewal in accordance with Section (h), which affords a cable operator the opportunity to submit a proposal for the renewal of a license at any time. The Town Council may, after adequate public notice and comment, grant or deny such proposal.
- E. The renewal of a license does not become effective until any renewal fees have been paid by the licensee.

SECTION 13-12 TRANSFERS AND CHANGE OF CONTROL

- A. Licensee shall not sell, transfer, assign, exchange or release, or permit the sale, transfer, assignment, exchange or release of more than forty nine percent (49%) of the cumulative ownership of the system without prior written authorization from the Town Council. For the purposes of this Section, a merger or consolidation shall be deemed a transfer or assignment. The Town Manager shall be promptly notified in writing, within sixty (60) days of the effective date of any such sale, transfer, assignment, exchange or release which constitutes more than five percent (5%) of the cumulative ownership of the system. Nothing in this section shall be deemed to prohibit a pledge or hypothecation or mortgage or similar instrument transferring conditional ownership of the systems assets to a lender or creditor in the ordinary course of business, unless such interest

shall exceed seventy five percent (75%) of the original cost or the fair market value, whichever is higher.

- B. No Licensee shall sell, transfer, assign, exchange or release, or permit the sale transfer, assignment, exchange or release of more than 10% of the cumulative ownership of the system, during the 36 month period commencing on final award to a licensee by the Town Council, without expressed written consent of the Town Council.

SECTION 13-13 INDEMNITY-INSURANCE

- A. The licensee shall at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, commissions, agents and employees by providing immediate defense with counsel approved by the Town Council, against any and all claims, suits, causes of action, proceedings and judgments for damages arising out of construction, maintenance or operation of the cable communication system.
- B. The licensee, within thirty days after written notice of the granting of a license, shall provide the Town with and maintain in full force throughout the term of the license agreement, insurance issued by a company duly authorized to do business in the State of Arizona, insuring with respect to the installation, construction, operation and maintenance of the system as follows:
1. Comprehensive general and automobile liability coverage including, but not limited to, blanket contractual liability, completed operations liability, broad form property damage including but not limited to coverage for explosion, collapse, underground hazard and automobile non-ownership liability. This insurance shall be written in the following minimum amounts.
 - Comprehensive general liability: \$1,000,000 combined single limit, bodily injury, and property damage
 - Comprehensive automobile liability: \$1,000,000 combined single limit, bodily injury and property damage
 - Excess umbrella liability, covering all the above mentioned hazards, in the minimum amount of \$4,000,000.
 2. Workers' compensation coverage as required by the laws and regulations of the State of Arizona.
 3. All insurance policies required herein shall include the Town of Fountain Hills as a named insured party.

4. Licensee shall be solely responsible for all premiums due and payable for insurance required herein. Licensee shall provide to the Town a certified copy of the policies listed above.
 5. All insurance policies required herein shall be in a form approved by the Town Attorney and shall include a sixty day notice of cancellation or modifying endorsement.
- C. The provisions of B above may, in the discretion of the Town, be satisfied by proof of self insurance.

SECTION 13-14 ADMINISTRATION

- A. Inspection of Records. The Town Council reserves the right during the term of the license agreement and during normal business hours and upon the giving of reasonable notice to examine, audit, review and obtain copies of licensee's contracts, engineering plans, accounting, financial data and service records relating to the property and operations of the licensee and to all other records required to be kept pursuant to this chapter.
- B. Licensee Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the licensee for the conduct of its business shall be provided to the Town Manager, upon request of the Town Manager.
- C. Town Manager. The Town Manager or his designee shall have responsibility for the day-to-day administration of cable communication operations within the Town as governed by this chapter and the applicable license agreements. The Town Manager shall be empowered to take all administrative actions on behalf of the Town Council except those actions specified herein which are reserved to the Town Council or another Town office or officer.

SECTION 13-15 GENERAL PROVISIONS

- A. Non-Discrimination. Licensee shall not deny service, access or otherwise discriminate against subscribers, users or residents of the Town. Licensee shall comply at all times with all applicable federal, state and Town laws, rules and regulations, executive and administrative orders relating to non-discrimination and equal employment opportunities and requirements.
- B. Laws and Codes. Licensee shall comply fully with all applicable local, county, state and federal laws, codes, ordinances, rules and regulations.
- C. Cumulative Rights and Remedies. Except as specified herein, all rights and remedies of the Town Manager and the Town Council in this chapter are

cumulative and may be exercised singly or cumulatively at the discretion of the Town Manager and/or the Town Council.

SECTION 13-16 RIGHTS RESERVED TO THE TOWN COUNCIL

Without limitation upon the rights which the Town Council may otherwise have and subject to Section 13-7.B(9) of this chapter, the Town Council does hereby expressly reserve the right to amend any section or provision of this chapter for any reason determined to be desirable by the Town Council including, but not limited to:

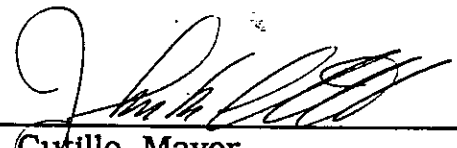
- A. New developments in the state of technology of cable communications systems.
- B. Any changes in federal or state laws, rules or regulations.

SECTION 13-17 EFFECTIVE DATE

It being necessary for the preservation of the peace, health and safety of Fountain Hills that this chapter become immediately effective, an emergency is hereby declared to exist, and this chapter shall be effective upon its passage and adoption.

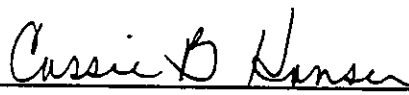
Passed, adopted and approved in a public meeting this 6th day of April, 1995.

TOWN COUNCIL OF FOUNTAIN HILLS
FOUNTAIN HILLS, ARIZONA



John M. Cutillo, Mayor

ATTEST:



Cassie B. Hansen, Town Clerk

AAL30208

- *9.) **CONSIDERATION** of approving a sub consulting construction-services CONTRACT with the WLB Group, Inc., for field surveillance, electrical engineering services, structural engineering services, drafting services, and structural inspection in the amount of \$45,000.

REGULAR AGENDA

- *10.) **CONSIDERATION** of Resolution 2006-31 declaring as public record that certain document filed with the Town Clerk and entitled the "2006 Amendments to the Tax Code of the Town of Fountain Hills."
- *11.) **CONSIDERATION** of Ordinance 06-17 relating to the privilege license tax; adopting the "2006 Amendments to the Tax Code of the Town of Fountain Hills" by reference; establishing an effective date; providing for severability and providing penalties for violations.
- 12.) **CONSIDERATION** of a TRAFFIC CONTROL CHANGE for the gated rear entrance to Kern Plaza.
- 13.) **PUBLIC HEARING** regarding a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 AM for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106, aka Four Peaks Plaza. Case #SU2006-04.
- 14.) **CONSIDERATION** of a SPECIAL USE PERMIT to allow the hours of operation to begin at 5:00 AM for a Starbucks to be located at 16815 East Shea Boulevard, Suite 106, aka Four Peaks Plaza. Case #SU2006-04.
- 15.) **CONSIDERATION** of ORDINANCE 06-14, a Town Code text amendment to remove all references to the Marshals Department.
- 16.) **CONSIDERATION** of RESOLUTION 2006-18, ADOPTING THE maximum amount for the Town of Fountain Hills Fiscal Year 2006-07 TENTATIVE BUDGET with appropriate direction to publish said document in accordance with state law. The Council may address any or all items contained in the budget document and initiate any suggested changes prior to adoption.
- 17.) **CONSIDERATION** of renewing the LICENSE AGREEMENT between the Town of Fountain Hills and Cox Communications.
- 18.) **COUNCIL DISCUSSION/DIRECTION** to the Town Manager.
- Items listed below are related only to the propriety of (i) placing such items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Council: A. *NONE*
- 19.) **SUMMARY OF COUNCIL REQUESTS** by Town Manager.
- 20.) **ADJOURNMENT.**

DATED this 17th day of May 2006:

Jane E. Robinson, Acting Town Clerk

The Town of Fountain Hills endeavors to make all public meetings accessible to persons with disabilities. Please call 837-2003 (voice) or 1-800-367-8939 (TDD) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting or to obtain agenda information in large print format. *Supporting documentation and staff reports furnished the Council with this agenda are available for review in the Clerk's office.*